



WEB COPY



O.S.A.(CAD) No.41 of 2026

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	08.04.2026
Pronounced on	30.04.2026

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN
and
THE HONOURABLE MRS. JUSTICE K. GOVINDARAJAN THILAKAVADI

O.S.A.(CAD)No.41 of 2026
and C.M.P.Nos.6201 & 6202 of 2026

Owners and parties interested in
M.V. Nereus Progress (IMO 9170913)
a Motor Vessel flying the Flag of St. Kitts
& Nevis lying at V.O. Chidambaranar
Port, Tuticorin and represented by her Master ...Appellant

Vs.

Om Freight Forwarders Limited,
a Company Incorporated under the Laws of India,
having its Registered Office address
at 101, Jayanth Apartments, A Wing,
Opposite Sahar Cargo Complex,
Sahar, Andheri (East),
Mumbai 400 099,
Maharashtra, India
through its authorised signatory
Mr. Raj Ashwin Joshi ...Respondent



O.S.A.(CAD) No.41 of 2026

WEB COPY

Prayer : Original Side Appeal filed under Section 13 of the Commercial Courts Act, 2015, read with Under Section 14 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) 2017, to set aside the impugned judgment dated 6th February 2026 passed in A.No.155 of 2026 in A.No.6081 of 2025 in C.S.No.314 of 2025.

For Appellant	:	Mr. Prashant S. Pratap Senior Advocate for Ms. Deepika Murali
For Respondent	:	Mr. P. Giridharan

JUDGMENT

K. GOVINDARAJAN THILAKAVADI,J.

The Appellant/Defendant has preferred the present appeal against common order dated 06.02.2026 passed in Application No.155 of 2026 and Application No.6081 of 2025 in C.S.(Commercial Div) No.314 of 2025.

2.The Respondent as Plaintiff filed the suit in C.S.(Comm.Div) No.314 of 2025 *inter alia* seeking an order and decree against the vessel M.V.Nereus Progress (IMO 9170913) and/or her owners and / or parties interest



O.S.A.(CAD) No.41 of 2026

in her;

WEB COPY

a)for a sum of INR 8,82,42,636.70 comprising of principal amount of USD 73,550.06 equivalent to Rs.66,10,679.39 and INR 6,90,18,750.20 along with interest of USD 20,069.03 (equivalent to INR 18,03,804.42) and Rs.55,09,402.66 together with legal costs of Rs.53,00,000.00 with further interest on principal amount of Rs.7,55,97,802.00 at the rate of 18% per annum from the date of the suit till date of realization.

b)For arrest and sale of the Vessel M.V. Nereus Progress in as is, where-is condition, together with the engines, tackles, cranes, paraphernalia, fixtures, furniture and fittings, presently in Indian waters at V.O.Chidambaranar Port, Tuticorin, Tamil Nadu State, India within the jurisdiction of this Hon'ble Court and territorial waters of India.

c)For a direction to adjust the sale proceeds of the Vessel M.V. Nereus Progress against the suit claim;

d)And for costs of this suit.

3.The above suit is instituted by the Respondent/Plaintiff for recovery of the above alleged dues arising under a charterparty entered into with Nereides



O.S.A.(CAD) No.41 of 2026

Marine Services in respect of a vessel, M.V. Bharadwaj, invoking Section 5(1) (b) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act 2017 and also moved an application in A.No.6081 of 2025 seeking for arrest of the appellant's vessel lying at V.O. Chidambaranar Port, Tuticorin, on the basis that the Respondent/Plaintiff is the owner of the vessel MV Bharadwaj. The said vessel was given on demise charterer by the Respondent/Plaintiff to Nereides Marine Services, UAE, under a Demise Charterparty dated 24.07.2024. This Charterparty is called a Bareboat Charterparty and is on the BARECON 2019 Standard Form of Contract published by BIMCO (Baltic and International Maritime Council) which is an international Organization which publishes Standard Forms of Charterparties to be used in the trade worldwide. The demise charterer Nereides Marine Services, UAE committed defaults in hire payment and a demand was raised by the Respondent for a sum of USD 73,550.06 (Rs.66,10,679.00) and Rs.5,28,12,794 aggregating to a total amount of Rs.5,94,23,473.00. It is the case of the Respondent/plaintiff that this amount was not paid and consequently they had a claim against the demise charter of their own vessel Nereides Marine Services. The Respondent/plaintiff filed the present suit and sought arrest of the Appellant/Defendant vessel Nereus Progress under Section 5(2) read with Section 5(1)(b) of the Admiralty Act,



O.S.A.(CAD) No.41 of 2026

2017 on the ground that Nereides Marine was the demise charterer of the vessel.

The Respondent/Plaintiff asserted that it had a maritime claim under Section 4(1)(h) of the Admiralty Act for unpaid Charter hire.

4.The claim of the Respondent/Plaintiff was resisted by the Appellant/Defendant stating that the Appellant/Defendant namely H.K.Shipping Ltd., Marshall Islands is the owner of the vessel MV Nereus Progress which was ordered to be arrested by this Court by order dated 04.12.2025. HK Shipping Limited had entered into a Demise Charterparty dated 03.10.2024 with Nereides Marine Services, UAE, as Demise Charterer. This Charterparty was also on the standard BARECON 2017 Form published by BIMCO. Thus, both vessels viz., the Respondent's vessel MV Bharadwaj and Appellant's vessel MV Nereus Progress had the same Demise Charterer Nereides Marine Service, UAE who defaulted in payment of hire charges both to the Appellant and to the Respondent.

5.Due to defaults committed by the Demise Charterer, the Appellant/Defendant terminated the charterparty on 13.11.2025 after issuing



O.S.A.(CAD) No.41 of 2026

several notices and demands for payment of outstanding charter hire to the tune of USD 696,500.00. The termination was in accordance with Clause 31 (a) (i) and 32 of the Charterparty. Hence, prayed for dismissal of the suit.

6. Pending Suit, the Respondent/Plaintiff filed an application in A.No.6081 of 2025 in C.S. No.314 of 2025 for an ex parte warrant of arrest against the appellant / defendant and for some other consequential reliefs. An interim order came to be passed on 04.12.2025 in A.No.6081 of 2025 in C.S. No.314 of 2025. Pursuant to the said order, the appellant/plaintiff has moved an Application in A. No.155 of 2026 for vacating the said order on the following grounds:

(i) The Appellant/Defendant entered into a bareboat charter-party dated 03.10.2024 with one M/s.Nereides Marine Services, which is the bareboat charterer in respect of the vessel for a period of three years. The said charter-party, under Clause 31, provides for termination and the owners are entitled to terminate the charter-party inter alia for non payment of hire as stipulated under Clause 15 of the charter-party.

(ii) Clause 15 of the charter-party pertaining to hire has been substituted by rider clauses to Barecon-2017 and more specifically Clause 6. In view of the



O.S.A.(CAD) No.41 of 2026

same, since there was a default in payment of hire, the appellant/defendant, through their solicitors, issued a demand notice dated 22.9.2025 to the bareboat charterer, which failed to pay the outstanding sum of USD 695,500. Thereafter, it was followed up with another letter dated 24.9.2025 by informing that the appellant/defendant was considering termination of the charter-party in terms of Clause 31.

(iii) In spite of receipt of the demand notice/letter, there was no response and hence, another notice was issued on 27.10.2025 through the solicitors, by which, it was made clear that the charter-party would be terminated in case of default. As a follow up measure, on 06.11.2025, the appellant/defendant issued an anti technicality notice to the bareboat charterer wherein it was stated that if the payment was not received during the grace period, the appellant/defendant would terminate the charter-party.

(iv) In spite of receipt of the said notice, the payment was not forthcoming and therefore, the appellant/defendant issued a termination notice dated 13.11.2025 and thereby lawfully terminated the bareboat charter-party with immediate effect under Clause 31(a)(i) for being in breach of the terms of hire. In the light of the above development, the appellant/defendant took a stand that with effect from 13.11.2025, the bareboat charter's relationship with the



O.S.A.(CAD) No.41 of 2026

defendant vessel stood completely severed.

WEB COPY

(v) The possession in the hands of the charterer, at best, can only be in its capacity as a gratuitous bailee pending repossession by the owner. Therefore, the order of arrest passed by this Court on 04.12.2025 subsequent to the termination notice dated 13.11.2025 is unsustainable since the entire foundation of arrest under Section 5(1)(b) of the Admiralty (Jurisdiction & Settlement of Maritime Claims) Act, 2017 (for short, the Act) is not satisfied.

The learned single judge, in the order dated 06.02.2026, allowed the Application No.6081 of 2025 and dismissed the Application in A. No.155 of 2026, consequently made the interim order absolute.

7. Aggrieved by this, the Appellant/Defendant has preferred the present appeal.

8. Mr. Prashant S. Pratap, learned Senior Counsel for the Appellant would submit that the learned Single Judge failed to consider the provisions of Clause 31 and 32 of the Charterparty relating to termination of the demise charter and physical repossession of the vessel. Though, the learned Single Judge made a



O.S.A.(CAD) No.41 of 2026

finding of fact in the impugned order that, the termination notice was issued on 13.11.2025 in line with Clause 31 (a) (1) of the Charterparty Agreement, however while interpreting Clause 32 of the Charterparty Agreement followed the judgment of the Sri Lankan Court, which did not consider a Clause similar to 32 but was concerned with a Lease Agreement providing for termination and return of vessel which is completely distinct and different from Clause 31 and 32 of the Charterparty in question.

9.His further submission is that, a plain reading of Clause 32 indicates that upon termination, owners shall have the right to repossess the vessel at its current or its next port of call or at a port or place convenient to them and pending physical repossession, Charterers shall hold the vessel as a gratuitous bailee only to the owners. It is further submitted that the Sri Lankan Judgment is clearly misplaced as the contract in question in the said judgment was not a Demise Charterparty on the BARECON 2001 FORM or BARCON 2017 FORM. It was a lease agreement and did not provide for the Charterer to hold the vessel as a gratuitous bailee pending physical repossession of the vessel.

10.Further, he would submit that, the learned Single Judge referred to the Australian Judgment in the case of *Hako Fortress* which specifically deals



O.S.A.(CAD) No.41 of 2026

with an identical termination and repossession Clause, but completely erred in holding that a Charter by Demise can be terminated effectively only by actual recovery of possession and control of the vessel. Whereas, the referred Australian Judgment says that a Charter by Demise can be terminated by notice and physical repossession is not necessary.

11.The learned counsel further submitted that the learned Single Judge failed to take notice of the letter dated 19 November 2025 addressed by the English Solicitors of the Appellant to the demise charterer in which it is stated that,

"Our clients, the owners of the vessel hereby exercise their right to repossess the vessel upon the vessel's berthing at Colombo pursuant to Clause 32 of the Charterparty and seek confirmation that possession would be given at that time without hindrance or interference." .

12.This is a categorical overt act on the part of the vessel owner (Appellant) to show that they actively asserted their right to regain possession and control of the vessel upon berthing at Colombo. Therefore, the findings of



O.S.A.(CAD) No.41 of 2026

the learned Single Judge that, there is also no material to *prima facie* conclude that the Defendant actively assert their right to regain possession and control of the vessel is completely erroneous and contrary to the record. The Learned Single Judge erred in not considering and referring to the aforesaid letter dated 19 November 2025 which was on record before the Learned Single Judge. On this ground alone the impugned judgment is liable to be set aside.

13.Thus he would contend that, if according to the Learned Single Judge the Defendant must actively assert their right to regain possession and control of the vessel, the Defendant has clearly done so by letter dated 19 November 2025. Consequently if this assertion of right is required to show that the Demise Charterparty was terminated then the Appellant/Defendant has clearly asserted their right by virtue of letter dated 19 November 2025. In this view of the matter, the Learned Single Judge ought to have allowed the application of the Defendant for vacating the ex-parte order of arrest of the vessel.

14.His further contention is that, the vessel was on the high seas and enroute to Colombo on 13 November 2025 when the demise charter was



O.S.A.(CAD) No.41 of 2026

terminated by the Appellant/owners. It was impracticable to effect physical delivery until the vessel reaches a port as provided in Clause 32. Consequently the earliest that physical possession could have been taken was at Colombo. However the vessel never went to Colombo and instead came to Tuticorin port on 2nd December 2025 and was arrested on 4 December 2025 before the owner could put their representative on board to indicate possession as per Clause 32 of the charterparty. The report of vessel's waiting at anchorage at Tuticorin port as produced by the Plaintiff shows that the vessel MV Nereus Progress was at anchorage on 29 November 2025. The vessel subsequently berthed on 2nd December 2025 as confirmed by the Plaintiff.

15. Therefore, the findings of the learned Single Judge that, the Appellant/Defendant was also aware of the fact that the vessel is available at V.O. Chidhambaranar Port, Tuticorin and as a prudent claimant, in order to establish the control over the vessel and to substantiate their intention to repossess the vessel, the overt act that was expected on the side of the appellant/defendant was to proceed against the bareboat charterer for the recovery of amount and seek for the arrest of the ship is incorrect. The Learned Single Judge failed to appreciate that the Appellant cannot seek arrest of their



own ship. Secondly the vessel was berthed at V.O. Chidhambaranar Port, Tuticorin only on 2nd December 2025 and the vessel was arrested two days later i.e., on 4th December 2025. Hence, there was no opportunity for the owner/Appellant to take physical possession of the vessel.

16.The learned counsel further submitted that there are no triable issues as contended by the Respondent and the question is entirely of interpretation of Clause 32 of the Charterparty contract. He would further contend that the issue raised by the Respondent/Plaintiff that there is some dispute as to whether the owner of the arrested vessel *MV Nereus Progress* is HK Shipping Ltd., or H & K Shipping Limited is of no consequence for the reason that, irrespective of who the owner is, the Respondent/Plaintiff is not entitled to arrest the vessel as the demise charterer of the vessel was not the demise charterer when the arrest was effective. Therefore, the same is not a triable issue. His further contention is that, Reliance on the judgment of the Hon'ble Apex Court in the case of *Videsh Sanchar Nigam Ltd. vs. MV Kapitan Kud & Ors* reported in (1996) 7 SCC 127, is misconceived. In the facts and circumstances of that case, the Hon'ble Apex Court applied the test of reasonably arguable best case, which is not applicable to the facts and circumstances in the case on hand. The



O.S.A.(CAD) No.41 of 2026

respondent/plaintiff has to make out a prima facie case for continuation of the arrest and only upon such case being made out the respondent / plaintiff would be entitled to sustain the arrest. No such prima facie case is made out by the respondent/plaintiff and the balance of convenience is in favour of the appellant alone.

17. Therefore, he would conclude that the Respondent/ Plaintiff failed to make out a prima facie case for continuation of the arrest of the vessel after having obtained an ex-parte order. The impugned judgment deserves to be set aside as it proceeds on a completely erroneous and misplaced reliance on the Sri Lankan judgment which does not interpret a Clause similar to Clause 32 of the Charterparty. There has been a failure on the part of the learned Single Judge to consider and apply the interpretation of an identical clause by the Federal Court of Australia in the case of *Hako Fortress*. Having held that there must be some overt act to show that the owner actively asserted their right to regain possession and control of the vessel, the Learned Single Judge ought to have considered letter dated 19th November 2025 addressed on behalf of the owners to the demise charterers as sufficient assertion of their right to regain possession and control of the vessel. Not considering this letter is fatal as this letter



O.S.A.(CAD) No.41 of 2026

completely complies with the requirement of assertion by owners of their right to take possession of their vessel at the port of Colombo. The demise charter was terminated on 13 November 2025 and owners of the vessel asserted their right to take possession of their vessel on 19 November 2025. Consequently the demise charterer of the vessel was not the demise charterer when the arrest was effected on 4 December 2025. The twin test requires that the demise charterer is liable for the claim and is the demise charter (or owner) of the vessel when the arrest is effected. The second part of the test that the demise charterer is the demise charterer of the vessel when the vessel is arrested is not satisfied and the order of arrest is liable to be and should be vacated.

18. For all the above reasons the impugned judgment is ex-facie wrong in law and deserves to be set aside. In fact to the extent that the impugned judgment requires the owners to actively assert their right to regain possession of the vessel, the owners have done so by letter dated 19 November 2025 and consequently the Learned Single Judge ought to have vacated the order of arrest as the requirement of the Learned Single Judge that the owners must actively assert their right to regain possession was complied with by the owners by virtue of the said letter



O.S.A.(CAD) No.41 of 2026

WEB COPY

19. On the other hand, the contention of the learned counsel for the Respondent /Plaintiff is that the application to vacate the order of arrest raises several triable issues. He would further submit that whether the Bareboat Charter Party was terminated or not raises triable issues of fact. The complete transfer of possession and control from the shipowner to the charterer is the very quintessence of a bareboat charter. Thus, physical redelivery (which effects a reversion of the transfer of possession and control is necessary for its termination. Clause 32 of the Bareboat Charter Party requires redelivery and repossession of the Vessel. Under clause 32 of the Bareboat Charter Party, pending physical re-delivery, the Bareboat Charterer shall hold the vessel as gratuitous bailee only. The vessel shall be deemed to be repossessed by the owners from the Bareboat Charterers upon the boarding of the vessel by the Owners's representative. Triable issues of fact to determine whether the Bareboat Charter Party was terminated.

20. His further submission is that, the Bareboat Charterer asserts that it has not accepted the alleged termination notice and continued to be in firm control and possession of the vessel. While so, the Appellant has to substantiate



O.S.A.(CAD) No.41 of 2026

as to whether the alleged termination notice of the Bareboat Charter was accepted and acted upon by the Bareboat Charterer. Therefore, the Bareboat Charterer has not acted as gratuitous bailee since it has not accepted the termination. In fact, the Bareboat Charterer raised a tax invoice upon the owner and affirmed that it is in firm control and employment of the vessel even after the alleged termination. It is further submitted that appellant could not track the vessel through publicly available platforms which show its presence at Tuticorin Anchorage on 28.11.2025. The V.O.Chidambaranar Port line up of 29.11.2025 shows the vessel is waiting at Anchorage to repossess the vessel. Further, no alternate crew were arranged to take over the vessel by the appellant and no arrangements were made to take possession of the vessel at Tuticorin Anchorage. Further, the Authorized Representative of the Appellant did not board the vessel, as required under Clause 32 of the Charterparty. The crew change had taken place only in February 2026 when there was a humanitarian crisis on board and no steps were taken for vacating arrest until 08.01.2026 i.e., 35 days after the vessel was arrested.

21.He would further submit that, though the Appellant has relied on the Federal Court of Australia's decision in Hako Endeavour [2013] FCAFC 21 to



O.S.A.(CAD) No.41 of 2026

argue that a bareboat charter can be terminated without re-delivery or re-possession, the said judgment is not applicable in the present case for the reason that the said decision was a final judgment after evidence. The question of termination was decided after a trial was conducted and evidence was recorded. It only shows that a trial is required to determine whether the Bareboat Charterparty was in fact terminated on 13.11.2025 as alleged by the Appellant. The Australian Court was deciding the termination of the Bareboat Charterparty for the purpose of Section 18 of the Australian Act, which is not *pari materia* to Section 5 of the Admiralty Act, 2017. Further, in the said case, there was no evidence that the Bareboat Charterer Hako Offshore ever disputed the amounts of indebtedness claimed by the shipowners or, in particular, Dolphin 2's exercise of its right to terminate the charterparty for Hako Fortress. In the case on hand, the Bareboat Charterer has not accepted the termination and reaffirmed that it is in firm control and employment of the vessel even after the alleged termination, and had scheduled employment for the vessel even after the alleged termination. Further, the Hong Kong Court of First Instance judgment relied upon by the Appellant in *Gulf Marine and Industrial Supplies Inc. v. The Demise Charterers of the Ship or Vessel MV 'Trident Dawn'*, to argue that re-delivery and re-possession are not required for termination of a Bareboat



O.S.A.(CAD) No.41 of 2026

Charterparty, is not applicable to the case on hand for the reason that the Hong Kong Court did not consider the English law position on the termination of Bareboat Charterparties.

22.In the present case, the Bareboat Charterer did not accept termination of the Bareboat Charterparty and there was no active assertion that the Bareboat Charterer had no further rights in relation to the vessel. Despite the vessel being in Tuticorin Anchorage since 28.11.2025, the Appellant has not asserted its right over the vessel till date by taking actual possession. The Appellant failed to assert its right or move for the release of the vessel for 35 days after the arrest was ordered. The Bareboat charterer continued to assert its firm control over vessel even after the alleged termination on 13.11.2025.

23.For the proposition that, physical re-delivery and re-possession are essential for the termination of a bareboat charter party, the respondent places reliance on the following decisions:

i. The Chem Orchid 2015 SGH 50] (paragraph 66 onwards from Page 227 of Index of Authorities filed by Respondents)



O.S.A.(CAD) No.41 of 2026

ii. New World P&I Service Co. Ltd. v. the Disponent Owner and/or the Demise Charterer of the Ship and/or the Vessel 'Es Valor' of the Port of Monrovia, Liberia |2024 Malayan Law Journal Unreported 3653) (paragraphs 92 onwards from Page 268 of Index of Authorities filed by Respondents)

iii.Navi Bunkering Crop v. M.V. Evangeli |CA/REM/02/2018] (pages 308 to 310 of Index of Authorities filed by Respondents)

IV. Songa Product & Chemical Tankers III AS v. Kairos Shipping II LLC [2025 EWCA Civ 1227) (paragraph 23 @ Pg 322 and paragraphs 41 - 50, pages 331 to 333 of Index of Authorities filed by Respondents)

24.Further he would submit that, even if no physical re-delivery or re-possession is required, the Appellant must still establish termination of the bareboat charter and that the bareboat charterer thereafter acted only as a gratuitous bailee. Both these have not been established by the Appellant. The bareboat charter party was never terminated (even by the Notice of Termination dated 13.11.2025), as evidenced by the conduct of the Parties from 13.11.2025 to 04.12.2025. The bareboat charterer had firm control and employment for the vessel, even after the alleged termination, and was therefore not acting as a



O.S.A.(CAD) No.41 of 2026

gratuitous bailee. The bareboat charterer was in control of the vessel with firm employment when this Court ordered the arrest of the vessel.

25.His further contention is that the additional documents filed by the appellant do not evidence valid termination of the Charter party. The above documents are incomplete and the full chain of correspondence has been concealed. The alleged email dated 05.12.2024 to show acceptance of termination by the Bareboat charterer is incorrect and misleading. The alleged email was sent after the arrest order was served on the Appellant and Bareboat charterer. The correspondence is based on legal advice and not contemporaneous between the parties. Despite the alleged termination, the appellant failed to take any steps for redelivery or repossession of the vessel from the time it reached Tuticorin Anchorage on 28.11.2025, till date. The crew was changed only at the instance of the V.O.Chidamabaranar Port in February 2026, because of a humanitarian crisis on board. The appellant always knew the vessel's location and movement status. This was available publicly on Marine Traffic and showed the location as Tuticorin even on 28.11.2025. On 20.11.2025 the bareboat charterer wrote "... We assure you that it remains our intention to comply with all contractual obligations." to the appellant,



O.S.A.(CAD) No.41 of 2026

evidencing intention to perform the charter party. On 27.11.2025 the bareboat charterer requested the owner for additional time to amicably resolve all outstanding payment matters. The vessel was underway to Colombo to fulfil scheduled employment. Even on 27.11.2025, the appellant sought confirmation on whether the vessel was on route for Colombo. This confirms subsistence of the bareboat charter party post the alleged termination on 13.11.2025. On 02.12.2025, the bareboat charterer has written to the appellant " As we have firm employment and control of the vessel, we are confident of generating the necessary funds to settle the outstanding higher payment." Even on 03.12.2025 the bareboat charterer has written to the appellant stating as follows:

(i) We sought guidance on whether the owners prefer to take repossession at Tuticorin.

(ii) If repossession is to be exercised, it may be taken at Tuticorin otherwise, we request that the vessel be allowed to proceed to Colombo to fulfil the scheduled employment,

(iii) Upon receiving confirmation of continuity, we will promptly furnish a firm hire payment plan, which we shall adhere to without fail.



O.S.A.(CAD) No.41 of 2026

WEB COPY

26. On 04.12.2025, the date of arrest ordered, the bareboat charterer wrote to the appellant stating that it was awaiting a confirmed update from its commercial team with respect to the cargo and voyage details.

27. Therefore, it is made clear from the additional documents that,

a. The bareboat charterer and appellant did not act in pursuance of any alleged termination.

b. The vessel was in "firm control and employment" of the bareboat charterer.

c. The bareboat charterer had scheduled employment for the vessel, and

d. The bareboat charterer held out to third-parties as being the lawful bareboat charterer in control and possession of the vessel, for the scheduled employment.

28. Moreover, the bareboat charterer is not a "gratuitous bailee" as claimed by the appellant since the bareboat charterer has admittedly raised a tax invoice of US \$ 58,900 for the period of 01.12.2025 to 21.12.2025 upon the appellant for operational debts on 26.12.2025. after the purported termination. The invoice shows that operation, management, and control of the vessel



O.S.A.(CAD) No.41 of 2026

continued with the bareboat charterer, and it was not merely a "gratuitous bailee". Furthermore, it could not have had any scheduled employment for the vessel after the alleged date of termination, nor expressed that it had firm control and employment and was proceeding to Colombo to fulfil such employment, had the charterparty in fact been terminated.

29.Further, the alleged reliance on the email of 05.12.2025 by the appellant to show acceptance of termination by the bareboat charterer cannot be accepted for the reason that the alleged email was sent after the arrest order was served on the appellant and the bareboat charterer. The alleged acceptance of termination is contrary to the parties conduct even as on 04.12.2025 i.e., the date of order of arrest. Therefore, the said email is of no consequence to support the case of the appellant.

30.Therefore, the Bareboat Charterer was never terminated on 13.11.2025 and the learned Single Judge rightly made the arrest order absolute, warrants any interference by this Court.

31.Heard on both sides, records perused.



WEB COPY

32.The crucial question to be decided in this appeal is whether a demise charterer of a vessel ceases to be a demise charterer upon termination of the charter party or, Whether physical possession of the vessel is required to be taken by the owner in order for the demise charterer to cease to be the demise charter of the vessel. If it so, what is the overt act required on the part of the owner to show that the owner has actively asserted their right to regain possession of the control of the vessel.

33.Now, it has to be seen whether physical repossession is mandatory for effective termination of charterparty and whether the Demise Charterer continues to be the Demise Charterer until physical repossession is taken by the owner or whether the vessels ceases to be on Demise Charterer upon termination.

34.There is no binding precedent governing the issue of whether termination of a Bareboat Charterer necessitates physical re-delivery or re-possession, or whether it may be effected solely by issuance of a notice of termination. The learned counsel for the appellant referring to Clause 32 of the



O.S.A.(CAD) No.41 of 2026

Charter Party Agreement would contend that, the above Clause makes it clear that upon termination, owner shall have the right to repossess the vessel at its current or its next port of call or at a port or place convenient to them and pending physical possession, Charterers shall hold the vessel as a gratuitous bailee only to the owners.

35. According to the appellant, the termination notice was issued on 13.11.2025 in line with Clause 31(a)(i) of the Charter-Party Agreement. In the said termination notice, the appellant enquired about the location of the vessel. It is submitted that by letter dated 19.11.2025 addressed by the English Solicitors of the Appellant to the demise charterer in which it is stated that, *"Our clients, the Owners of the vessel hereby exercised their right to repossess the vessel upon the vessel's berthing at Colombo pursuant to Clause 32 of the Charter party and seek confirmation that the possession would be given at that time without hindrance or interference."* Thus, according to the appellant, this is a categorical overt act on the part of the appellant / vessel owner to show that they actively asserted their right to regain possession and control of the vessel upon berthing at Colombo.



O.S.A.(CAD) No.41 of 2026

WEB COPY

36. Where as, the respondent position is that, the bareboat charter party was never terminated even by the notice of termination dated 13.11.2025, as evidenced by the conduct of the parties from 13.11.2025 to 04.12.2025. the bareboat charterer had firm control and employment for the vessel even after the alleged termination, and was therefore, not acting as a gratuitous bailee at the time of arrest ordered by this Court.

37. The specific case of the appellant is that as per the bareboat charter party dated 03.10.2024, the parties have agreed that English law will govern them.

38. Therefore, a demise (or Bareboat) charterer generally does not cease to be the demise charterer immediately upon the contractual termination or expiration of the charter party. Physical re-delivery of the vessel and the taking of possession by the owner is usually required to terminate the demise charterer's status. The "quintessence" of a demise charterer is the complete transfer of possession and control, meaning the charterer steps into the shoes of the owner. Consequently, the charterer remains the demise charterer until that possession and control are returned to the owner, even if the Agreement has terminated contractually, via a notice.



WEB COPY

39.While some Industry forms (Eg. BARECON) and certain Court views in Australia/Hong Kong suggest an owner may terminate without actual physical possession, the strict requirement of re-delivery to end the status is the commonly accepted rule to ensure security for maritime claims. Generally, the doctrine of "constructive re-delivery", where a vessel is considered re-delivered without physical handover is not strongly accepted in this context, as it could prejudice third parties.

40.But common law, as affirmed in *The Chem Orchid* , the Singapore High Court, dictates that a bareboat charterer is terminated only upon the actual, physical re-delivery of the vessel back to the owner. This requirement protects third parties who, after contractual termination but before re-delivery, might otherwise be left with no party to hold accountable for liabilities. Without physical re-delivery, a "limbo" period occurs where the charterer no longer operates under the charterer but retains legal possession, making them still liable as the demise charterer. For the purpose of liabilities and in rem actions, the demise charterer continues to be the demise charterer until physical possession is retaken by the owner. Therefore, physical re-delivery and repossession are essential for the termination of a bareboat charter party.



O.S.A.(CAD) No.41 of 2026

WEB COPY

41.While, the English Maritime Law imposes a condition that the owner of the vessel must take all reasonable efforts to repossess the vessel. While so, the owner of the vessel is expected to take necessary steps for repossessing the vessel and that if the same is done, it satisfies the requirement of the law of the United Kingdom. If that being so, what is the overt act on the part of the appellant/owner to show that it has actively asserted its right to regain possession of the control of the vessel.

42.The next question arises for determination is whether the Respondent has established a prima facie and reasonably arguable best case for the order of arrest to be upheld and the matter must proceed to trial. According to the respondent as of 03.11.2025, a principal sum of USD73,550.06 and Rs.6,90,18,750.20 which approximately aggregates to Rs.7,56,29,429.59 is due and payable by the Bareboat charterer to the Respondent. Since the Bareboat charterer and the guarantor did not response to the above said claim and the cheques issued were dishonoured due to insufficient funds/closed accounts, the respondent has filed the present suit for recovery of money and for arrest and sale of the Vessel belonging to the defendant. Therefore, the respondent has



O.S.A.(CAD) No.41 of 2026

established by producing relevant documents that it has a maritime claim against the defendant vessel under Section 4(1)(h) r/w Section 5(1)(b) and 5(2) of the Admiralty (Jurisdiction and Settlement of Maritime claims) Act, 2017 and therefore is entitled to assert its maritime claim for the recovery of the amounts due and payable to the applicant. Therefore, the plaintiff has made out a *prima facie* case for grant of arrest.

43.Further, an order of arrest for a vessel can be vacated primarily by providing sufficient security, such as a bank guarantee or cash deposit into Court to cover the claim, interest and costs. Other grounds include showing the arrest was wrongful, the claim is not a valid maritime claim, the Court lacks jurisdiction, or by settling the claim directly with the plaintiff. The appellant herein failed to establish that the arrest was wrongful and the claim is not a valid maritime claim and that the Court lacks jurisdiction for vacating the order of the arrest. The learned Single Judge while passing the interim order have considered the entire materials on record, rightly found that the plaintiff has made out a *prima facie* case and that the proceedings initiated by the plaintiff was not vexatious or frivolous so as to halt the proceedings in limine.



O.S.A.(CAD) No.41 of 2026

WEB COPY

44.The learned Single Judge applied the principles laid down by the Hon'ble Apex Court in *Videsh Sanchar Nigam Limited Vs. M.V.Kapitan Kud* reported in *1996(7)SCC127* rightly held that, where a strong triable case has been made out by the plaintiff, the Court has to be circumspect in releasing the ship that has been arrested in the absence of any other security since, if a foreign ship leave the shores of the Indian Territorial waters, it will be very difficult to get hold of it and it may not return to the jurisdiction of the Indian Courts and thereby the plaintiff lose their right forever to initiate proceedings in rem in this country.

45.Further, it is pertinent to note that, once a third party, which has a valid prima facie claim, loses its security by permitting the vessel to leave the shores of India, it may lead to losing their right forever to entertain proceeding in rem in this Country.

46.In the light of the above discussions, considering the fact that that plaintiff has made out a prima facie case and applying the reasonably arguable



O.S.A.(CAD) No.41 of 2026

best case test, as regards to identity of the ownership of the vessel and whether the appellant has actively asserted their right to regain possession of the control of the vessel, as triable issues, the learned Single Judge has rightly dismissed the vacate petition filed by the appellant and made the interim order of arrest absolute. No infirmity is found in the said order of the learned Single Judge which warrants interference by this Court.

47.In the result, this original side appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(P.V.J.,) (K.G.T.J.,)

30.04.2026

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
vsn



O.S.A.(CAD) No.41 of 2026

To
WEB COPY

- 1.M/s.Photon Factory
Rep. By its Partner,
Mr.Gautham Vasudev Menon
No.205, Lloyds Road,
Royapettah,
Chennai- 600 014
- 2.M/s.R.S.Infotainment (P) Ltd.,
Rep. By its Director, Mr.R.Jayaraman,
S/o. Sri A.Ramanujam
No.16, Bhagavandan Street,
Flat No.5, Goodwill Apartments,
T.Nagar, Chennai-17.
- 3.M/s.Escape Artists,
Represented by its Partner,
Mr.P.Madan,
No.205, Lloyds Road,
Royapettah,
Chennai-600 014



WEB COPY



O.S.A.(CAD) No.41 of 2026

**P.VELMURUGAN,J.
and
K.GOVINDARAJAN THILAKAVADI,J.**
vsn

**Pre-delivery judgment made in
O.S.A.(CAD)No.41 of 2026
and C.M.P.Nos.6201 & 6202 of 2026**

30.04.2026