



IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

Thursday, the 3rd day of April 2025 / 13th Chaithra, 1947

IA.NO.1/2024 IN ADML.S. NO. 8 OF 2023 J

APPLICANTS/DEFENDANT 1 & 2:

1. OWNERS AND PARTIES INTERESTED IN THE VESSEL, M.V. KOREA CHEMI (IMO 9274276) A FOREIGN FLAG VESSEL, FLYING THE FLAG OF SOUTH KOREA (REPUBLIC OF KOREA) ALONG WITH HER HULL, ENGINES, MACHINERY, BOATS, APPAREL AND OTHER PARAPHERNALIA PRESENTLY ANCHORED WITHIN THE NHAVA SHEVA (JAWAHARLAL NEHRU) PORT LIMITS REPRESENTED BY THE MASTER OF THE VESSEL, PIN - 400707.
2. M.V. KOREA CHEMI (IMO 9274276) A FOREIGN FLAG VESSEL, FLYING THE FLAG OF SOUTH KOREA (REPUBLIC OF KOREA) PRESENTLY ANCHORED WITHIN THE NHAVA SHEVA (JAWAHARLAL NEHRU) PORT LIMITS REPRESENTED BY THE MASTER OF THE VESSEL, PIN - 400707.

RESPONDENTS/PLAINTIFF 1-6 & DEFENDANTS 3 TO 5:

1. SILUVAIPICHAIR FRANCIES, AGED 55 YEARS, S/O FRANCIES, H.NO. 35-78/43A, SANGUVILAGAM, NEERODI, VILAVANCODE, KOLLANGODU, KANYAKUMARI DISTRICT, TAMIL NADU STATE, PIN - 629160.
2. YESUDHASAN, AGED 66 YEARS, S/O FRANCIS, 35-66, CHANKUVILAGAM, NEERODI, KOLLEMCODE P.O., VILAVANCODE, KANYAKUMARI DISTRICT, TAMIL NADU STATE, PIN - 629160.
3. VINCENT SEBASTHIYAN, AGED 66 YEARS, S/O SEBASTHIYAN, 93 TSUNAMI COLONY, MARTHANDAMTHURAI, KOLLENCODE, VILAVANCODE, KANYAKUMARI DISTRICT, TAMIL NADU STATE, PIN - 629160.
4. SUGANTHAN RAMAKRISHNAN, AGED 37 YEARS, S/O RAMAKRISHNAN, 132 PDA, SINGARAVELAR NAGAR, SERUTHUR, PRATHABARAMAPURAM, NAGAPATTINAM, TAMIL NADU STATE, PIN - 611111.
5. SELVAM THAVASIMUTHU, AGED 35 YEARS, S/O THAVASIMUTHU, NO.6 PDA, SINGARAVELAR NAGAR, PRATHABARAMAPURAM, NAGAPATTINAM, TAMIL NADU STATE, PIN - 611111.
6. RAJKUMAR, AGED 38 YEARS, S/O SAMIKANNU, 41, SINGARAVELAR NAGAR, BDA, PRATHABARAMAPURAM, NAGAPATTINAM, TAMIL NADU STATE, PIN - 611111.
7. MASTER OF THE VESSEL M.V. KOREA CHEMI (IMO 9274276) A FOREIGN FLAG VESSEL, FLYING THE FLAG OF SOUTH KOREA (REPUBLIC OF KOREA) PRESENTLY ONBOARD THE VESSEL M.V. KOREA CHEMI ANCHORED WITHIN THE NHAVA SHEVA (JAWAHARLAL NEHRU) PORT LIMITS, PIN - 400707.
8. SECOND OFFICER OF THE VESSEL M.V. KOREA CHEMI (IMO 9274276) A FOREIGN FLAG VESSEL, FLYING THE FLAG OF SOUTH KOREA (REPUBLIC OF KOREA) BETWEEN 10.00 PM AND 11.00 PM ON 19-10-2023 PRESENTLY ONBOARD THE VESSEL M.V. KOREA CHEMI PRESENTLY ANCHORED WITHIN THE NHAVA SHEVA (JAWAHARLAL NEHRU) PORT LIMITS., PIN - 400707.
9. ABLE SEAMAN OF THE VESSEL M.V. KOREA CHEMI (IMO 9274276) A FOREIGN FLAG VESSEL, FLYING THE FLAG OF SOUTH KOREA (REPUBLIC OF KOREA) BETWEEN 10.00 PM AND 11.00 PM ON 19-10-2023 PRESENTLY ONBOARD THE VESSEL M.V. KOREA CHEMI PRESENTLY ANCHORED WITHIN THE NHAVA SHEVA (JAWAHARLAL NEHRU) PORT LIMITS, PIN - 400707.



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Application praying that in the circumstances stated in the affidavit filed therewith the High Court be pleased to 1.Reject the plaint in its entirety against the Applicants/Defendants 1 & 2 for (a) failure to disclose cause of action, (b) lack of jurisdiction and (c) the plaint being barred under the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act 2017. 2. Return the security deposit of INR 1 crore, which is currently deposited in an interest bearing account, along with accrued interest to the Applicants through their appointed Advocates, and 3. Pass such other reliefs, including costs of this application, as this Hon'ble court deem fit and appropriate in the facts and circumstances of this case.

This Application coming on for orders upon perusing the application and the affidavit filed in support thereof, and upon hearing the arguments of SRI.AMITAVA MAJUMDAR and M/S PRANOY K. KOTTARAM, SIVARAMAN P.L. and AMITAVA MAJUMDAR Advocates for the petitioners and of M/S.YASH THOMAS MANNULLY, G.SANTHOSH KUMAR (P)., SOMAN P.PAUL, Advocates for R1 to R6 in IA/Plaintiffs in Admiralty Suit, M/S PRANOY K. KOTTARAM, SRI.SIVARAMAN P.L., Advocates for the respondents 7 and 9, the court passed the following:



**'C.R'****SYAM KUMAR V.M., J.**

I.A.No.1 of 2024
in
Adml.Suit No.8 of 2023

Dated this the 3rd day of April, 2025**ORDER**

This application is filed under Order VII Rule 11 r/w Section 151 of the Code of Civil Procedure, 1908 (CPC) by the applicants, who are defendants 1 and 2 in the above Admiralty Suit seeking to reject the plaint *inter alia* for being barred by the provisions of Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017. Respondents in the I.A. are plaintiffs 1 to 6 and defendants 3 to 5.

2. The bare facts relevant for the disposal of this I.A. are as follows:

Plaintiffs (Respondents 1 to 6 in the I.A.) are fishermen



engaged in the avocation of deep sea fishing. On 19.10.2023, at 10.20 P.M., while they were engaged in fishing onboard the fishing boat MERCY ANNAI off the Kannur Coast, beyond the territorial waters of India, the 2nd defendant vessel collided with the fishing boat causing plaintiff Nos.1 and 4 to be thrown into the sea. The 2nd defendant is a foreign flag vessel. At the time of filing of the suit, the 2nd defendant was anchored at Nhava Sheva port limits under the Jawaharlal Nehru Port, Mumbai. The 1st defendant is the owner/party interested in the 2nd defendant vessel. The 3rd defendant is the Master of the vessel. The 4th and 5th defendants are persons employed on board the vessel. The plaintiffs had escaped imminent death. They are not able to pursue their avocation having not recovered from the physical and mental trauma of the incident. They have been denied of their livelihood and are suffering considerable social stigma detrimentally affecting their community life. Their fishing avocation has been affected due to the said incident. Damage had been caused to the fishing boat MERCY ANNAI. The incident had occurred due to the gross negligence and



recklessness shown by defendant Nos.2 and 3 in navigating, operating and managing the vessel and due to non compliance with the provisions of International Maritime Conventions and requirements of Merchant Shipping Act, 1958 in relation to safety of life at sea. Damage has been suffered by the plaintiffs due to the illegal act committed by the 2nd defendant vessel in direct connection with its operation. Persons employed on board including defendants 3 to 5 are liable for the same. An FIR No.7 of 2017 had been lodged with Fort Kochi Police Station within the jurisdictional limits of this Court. A maritime investigation by the competent authorities under the Merchant Shipping Act, 1958 is pending. Defendants 2 to 5 did not provide any help to the distressed plaintiffs after the collision incident. Plaintiffs have a legal and subsisting maritime claim against the 2nd defendant vessel which is lying within Indian coastal waters and purportedly within the inherent admiralty jurisdiction of this Court. Plaintiffs are entitled to exercise their right *in rem* against the 2nd defendant vessel and this Court has jurisdiction territorially to entertain the suit. The plaintiffs thus sought the following reliefs:



“(a) That the defendants No.1 to 5 be jointly and/ or severally ordered and decreed to pay to the plaintiffs, a total sum of Rs.1,00,00,000/- (Indian Rupees One Crore only) with Rs.50,00,000/- (Rupees Fifty Lakhs only) to plaintiff No. 1 and Rs.10,00,000/- (Rupees Ten Lakhs only) each to plaintiffs No.2 to 6 along with interest at the rate of 6% per annum from the date of decree till the date of payment/realisation.

(b) That the second defendant ship MV KOREA CHEMI (IMO 9274276) a foreign flag vessel, flying the flag of South Korea (Republic of Korea) with her hull, engines, machinery, boats, apparel and other paraphernalia presently anchored within the Nhava Sheva (Jawaharlal Nehru Port) Port limits may be ordered to be arrested.

(c) That the first defendant ship MV KOREA CHEMI (IMO 9274276) a foreign flag vessel, flying the flag of South Korea (Republic of Korea) along with her hull, engines, machinery, boats, apparel and other paraphernalia presently anchored within the Nhava Sheva (Jawaharlal Nehru Port) Port limits may be detained, condemned and sold through the Registrar of this Honourable Court and the sale proceeds thereof be applied towards the satisfaction of the plaintiff's claim.

(d) for costs of the suit and

(e) any other reliefs may kindly be granted in favour of the plaintiff under the facts and circumstances of the case as this Honourable court may deem fit and proper.”

3. The defendants entered in appearance and filed their written statements. To avoid the interim arrest of the vessel, without prejudice and without conceding to the jurisdiction of this Court, the 1st defendant furnished security for an amount of Rs.1,00,00,000/-



(Rupees One Crore). Thereafter, the above I.A.No.1 of 2024 has been filed by the 1st and 2nd defendants invoking Order VII Rule 11 r/w Section 151 of the CPC seeking the following prayers:

- “1. Reject the plaint in its entirety against the applicants/ defendants 1 & 2 for (a) failure to disclose cause of action, (b) lack of jurisdiction and (c) the plaint being barred under the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017.*
- 2. Return the security deposit of INR 1 Crore which is currently deposited in an interest bearing account , along with accrued interest to the applicants through their appointed Advocate, and*
- 3. Pass such other reliefs, including cost of this application, as this Hon'ble Court deem fit and appropriate in the facts and circumstances of this case.”*

A counter affidavit has been filed by the plaintiffs in the above I.A. Defendants 1 and 2 have filed a reply affidavit thereto. Apparently similar petitions have been filed by the other defendants too. However, the above I.A. filed by defendants 1 and 2 alone is argued before me and hence consideration is limited to the said I.A.No.1 of 2024.

4. Heard Sri.Amitava Majumdar, Advocate instructed by Sri.Prannoy Kottaram, Advocate for the applicants in the I.A. (defendants Nos.1 and 2 in the suit) and Sri.Yash Thomas Mannully,



Advocate for respondent Nos.1 to 6 in the I.A. (Plaintiffs in the suit).

5. **Contentions of the applicants/defendants 1 and 2 in brief:**

- The plaint does not disclose any cause of action against the applicants/defendants 1 and 2. The suit is barred by law and not maintainable before this Court. This Court lacks territorial and admiralty jurisdiction to entertain the suit.
- Plaintiffs after admitting that at the relevant point of time, the 2nd defendant vessel was anchored at Nhava Sheva Port limits under the Jawaharlal Nehru Port, Mumbai, cannot maintain this suit. Admittedly the vessel was not within the jurisdictional limits of this Court at the time of seeking its arrest. Hence invocation of admiralty jurisdiction to arrest the vessel lying beyond the limits of this Court cannot be maintained. The same is specifically barred by law. The said admission itself is sufficient to lead to a rejection of the plaint under Order VII Rule 11 CPC on account of it being barred under the Admiralty Act, 2017 for lack of jurisdiction.
- Even going by the averments in the plaint, the incident



occurred beyond the territorial jurisdiction of this Court which is limited to 12 nautical miles from the coastline. The plaintiffs have pleaded that the alleged incident had occurred 48 nautical miles off the Kerala coast which is beyond the territorial jurisdiction of this Court as explained in Section 3 of Admiralty Act, 2017. This Court lacks jurisdiction on the said count too.

- Admiralty proceedings initiated by the plaintiffs being an action *in rem*, the presence of the vessel within the territorial jurisdiction is sine qua non for invoking admiralty jurisdiction of the court. It is after being satisfied that the vessel is within its territorial jurisdiction that the court can initiate proceedings by issuing a warrant of arrest against the vessel. None of these conditions are satisfied in the matter and on this ground alone the plaint is liable to be rejected and the suit is liable to be dismissed.
- The plaint is bereft of any averment regarding the alleged collision incident. It fails to mention or disclose any document that even *prima facie* would show that there was an incident of



collision involving the 2nd defendant vessel. Blanket assertions have been raised and reliefs sought against the defendant vessel in order to impute a cause of action which does not exist.

- The attempt by filing this suit is to exert duress on the defendants and to satisfy the illegal claims put forth by the plaintiffs. The suit is manifestly meritless, gross abuse of process of court and an unnecessary waste of judicial time. Proceeding with the instant suit will cause grave harm and prejudice to the defendants.
- Bald, unparticularised and sweeping allegations and averments have been made against the defendants without a single specific averment disclosing the cause of action against them or the details of the alleged incident allegedly providing the cause of action.
- Plaintiffs have failed to plead, aver or even indicate any tenable and existing law which permits them to seek damages against the defendants. Plaintiffs have proceeded on a wholly



erroneous basis against the applicants/defendants 1 and 2 and gives a patently malafide and incorrect narration of facts allegedly giving rise to a cause of action that is then purported to be used against the defendants in order to sustain the case against them.

- Reliance is placed on the dictum laid down in **T.Arivandandam v. T.V.Satyapal and another** [(1977) 4 SCC 467].

6. **Contentions of the respondents 1 to 6/plaintiffs in brief:**

- The I.A. filed is not maintainable in facts and law. The details of the Master of the 2nd defendant vessel has not been provided and hence the plaintiffs have not been able to verify whether the vakalath and I.A. has been properly and validly executed. There is no valid power of attorney for defendants 1 and 2 and they have not been properly represented as required under law.
- No valid and cogent reasons have been stated in the accompanying affidavit in the said I.A. and it has been filed to defeat the ends of justice.



- The Admiralty Act, 2017 has not taken away or limited the inherent jurisdiction of the court over marine casualties happening in the Exclusive Economic Zone of India. Powers continue to be vested with this Court under the Merchant Shipping Act, 1958 and other relevant laws including the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (Act of 1976), the Suppression of Unlawful Acts against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002 (SUA Act, 2002) etc.
- The enacting of Admiralty Act, 2017 does not take away or restrict the admiralty jurisdiction of coastal High Courts as per the ratio laid down in the judgment of the Hon'ble Supreme Court in **M.V.Elisabeth and others v. Harwan Investments and Trading Pvt. Ltd.** (AIR 1993 Supreme Court 1014).
- As per the dictum in **M.V.Elisabeth** (supra), international conventions form part of Indian law including the International Convention on Arrest of Ships, 1952. This Court can hence



exercise jurisdiction by virtue of the powers under the said Convention.

- Provisions of the Merchant Shipping Act, 1958 can be availed for taking in rem action for arresting an offending vessel.
- The Merchant Shipping Act, 1958 vests jurisdiction on this Court to arrest any vessel worked or anchored or passing through its territorial limits. This power is also vested with this Court under the inherent admiralty jurisdiction possessed by this Court.
- The marine casualty on 19.10.2023 and the damages ensuing therefrom occurred due to the gross negligence in navigation of the 2nd defendant vessel.
- The 1st defendant who are the owners/Managers of the 2nd defendant vessel have no other immovable or movable property within the jurisdiction of the court or in India. The plaintiffs will not be in a position to realise the amount due to them by any effective means unless the security presently furnished is retained. If the I.A. is allowed and the security



furnished is returned, then any decree that could be granted by this Court later will be rendered ineffective and non executable.

- Reliance is placed on the dictum in **M/s.Kuwait International Finance Co. v. Lakshmi Sagar** (1980 KHC 412); **Raja Pushpam v. John Raj** (AIR 2019 Madras 129); **Pankajakshi (Dead) through LRs and others v. Chandrika and others** [2016 (1) KHC 777]; **Anthonyarpicha and others v. MV Mayuree Naree and others** [2018 (3) KLT 966]; **Sabeeha Faikage and others v. Union of India and others** [(2013) 1 SCC 282] for buttressing the contentions put forth.

Discussion and Analysis :

7. Before proceeding to consider the respective contentions, I deem it relevant to examine the scope and purview of an application filed under Order VII Rule 11 CPC. It is trite that while entertaining an application under Order VII Rule 11 of the CPC, the Court has to examine whether any of the six circumstances enumerated therein as (a) to (f) are attracted. If the suit does not attract any of those



situations, the plaint cannot be rejected. It is settled that rejection of a plaint being an action of great consequence, it should be done with great circumspection and care. I thus note at the very threshold that the exercise of powers of dismissal is to be done only in cases where even on a plain reading of the plaint, no cause of action is disclosed. (See **Ponnala Lakshmaiah v. Kommuri Pratap Reddy and others** [(2012) 7 SCC 788]. The test for exercising power under Order VII Rule 11, I note that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, whether the same could result in a decree being passed [See **Dahiben v. Arvinbhai Kalyanji Bhanusali (Gajra) dead through LRs and others** (2020) 7 SCC 366]. It is also trite that at the stage of an Order VII Rule 11 applications, the pleas taken by the defendants in the written statement and application for rejection of the plaint on merits would be irrelevant and cannot be adverted to or taken into consideration (**Dahiben** supra). At the same time, if on a meaningful and not formal reading of the plaint, it is manifestly vexatious and meritless in the sense of not disclosing a clear right to



sue, the court is bound to exercise the power under Order VII Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. It is trite that even if clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order X of the Code (See **Sopan Sukhdeo Sable v. Assistant Charity Commissioner and others** [(2004) 3 SCC 137]).

8. Thus the scope of Rule 11 of Order VII CPC as explained in various decisions and the legal principles guiding the said provision deducible are that, if the plaint does not disclose a cause of action or is barred by law; it can be rejected where the litigation is utterly vexatious and reeks of abuse of process of court ; if any one of the conditions mentioned under the Rule were found to exist, thus saving the defendants onerous and hazardous task of contesting a non maintainable suit during the course of protracted litigation and also where the suit was instituted without proper authority. Thus the provision of Order VII Rule 11 CPC, being procedural, is designed and aimed to prevent vexatious and frivolous litigation. It is settled



that a court's lack of jurisdiction can be a ground for rejecting a plaint under Order VII Rule 11 of the CPC. Specifically, Rule 11(d) allows for the rejection of a plaint if the suit is barred by any law, which includes the court's lack of jurisdiction. It is trite that in the event, the jurisdiction of the court is found to be barred by any law, meaning thereby, the subject-matter thereof is beyond its realm of competence to adjudicate, the application for rejection of plaint should be entertained. I also note that the provision of Order VII Rule 11 an element of mandatoriness about it. It states that the plaint "shall" be rejected if any of the grounds specified in clause (a) to (e) are made out. If the Court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the Court has no option, but to reject the plaint [**Dahiben** (supra)]. I also hastened to caution that while this petition has been filed by defendants 1 and 2 alone, the result thereof could impact the suit as well as the other petitions filed by other defendants.

9. It would also be contextually relevant to examine in brief the nature, scope and extent of the 'admiralty jurisdiction' as



exercised by this Court, invoking which this suit has been filed by the plaintiffs. Any lack of clarity that existed earlier with respect to the exercise of admiralty jurisdiction by the Indian High Courts has been put to rest by the coming into force of the Admiralty Act, 2017 on 1st of April 2018. Section 3 of the said Act reads as follows:

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

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

Thus the admiralty jurisdiction in respect of ‘maritime claims’ (as defined under Section 4 of the Admiralty Act, 2017 and available only against a ‘vessel’) vested with this Court is exercisable by this Court over the waters including ‘Territorial waters’ that extends up to 12 nautical miles (measured from the base lines) situated within its territorial jurisdiction. Since the territorial jurisdiction of this Court encompasses the entire State of Kerala and the Union Territory of



Lakshadweep, admiralty jurisdiction can be exercised over waters along the coast including 'territorial waters' which would fall within the said geographical limits. As per Section 3 of the Act of 1976, the limit of the 'territorial waters' is the line every point of which is at a distance of twelve nautical miles from the nearest point of the appropriate baseline. Any extension of jurisdiction beyond the said prescribed limits would require an empowerment or authorisation by law. In this context, it is also relevant to note the peculiar nature of admiralty jurisdiction, at times leading it to be imprecisely termed as a 'universal jurisdiction' thereby only meaning that the admiralty court will have jurisdiction to entertain the subject matter wherever in the world the cause of action for the maritime claim had arisen, provided the vessel is later found within the jurisdictional limits of the court. Thus the mere fact that the incident leading to the vesting of maritime claim and consequent invocation of admiralty jurisdiction happened beyond the jurisdictional limits of this Court, will not by itself render this Court 'jurisdiction less' over the subject matter, provided the vessel is subsequently found within the jurisdictional



limits of this Court at the time when the admiralty jurisdiction is invoked. Thus any 'maritime claim' involving a vessel found within the said jurisdictional limits of this Court, irrespective of whether the incident leading to the relevant 'maritime claim' has happened within or beyond the said limits, is exigible to the admiralty jurisdiction of this Court. It follows therefrom that a 'maritime claim' arising from an incident of collision between a vessel and marine boat alleged to have occurred beyond the 12 nautical mile territorial waters, is not beyond the purview of the 'admiralty jurisdiction' of this Court provided the vessel involved in the incident is later found within the jurisdictional limits of this Court and the claimant moves this court invoking its admiralty jurisdiction. However, if such a vessel at the time of invocation of admiralty jurisdiction is beyond the limits of this Court, say within the limits of the jurisdiction of another High Court, (as for instance the High Court of Bombay, as is admitted in this case at hand) then the jurisdiction would exclusively be vested in the said High Court and this Court is barred by the express provisions of Section 3 of the Admiralty Act, 2017 from exercising admiralty



jurisdiction over such vessel lying beyond its jurisdictional limits. This is a norm of law, the presence of which in the statute book is justified both by legal prudence as well as by practical convenience. On the first count, for an effective enforcement of admiralty jurisdiction it is imperative that the *res* or the 'thing' over which such jurisdiction is being exercised by issuing an order of arrest must be situated within the territorial limits of the court issuing the same or within the control of authorities over whom such court has command or jurisdiction for enforcement of such order. For instance, the port authority within whose jurisdiction the vessel is berthed or anchored should be exigible to the jurisdiction of the court exercising admiralty jurisdiction so that an order for arrest in *rem* could be effectively enforced over the vessel. It is even more so since the admiralty jurisdiction vested in the court encompasses the power to sell the vessel (see Section 4 (2) of the Admiralty Act, 2017) which would require the physical presence of the vessel within the limits of the court. Secondly, maritime activity being an enterprise very susceptible and vulnerable to disruptions, leading to huge monetary



consequences, clarity regarding jurisdiction provides vessels and its owners, avenues to seek protections like admiralty caveats from the courts having admiralty jurisdiction over the vessel, thus enabling them to prevent disruption of the schedule of the vessel by the laying of a frivolous or vexatious suit. Thus the presence of the vessel within the territorial jurisdiction is the sine qua non for arresting the same invoking admiralty jurisdiction and it is only after being satisfied that the vessel is within its territorial jurisdiction that the court can initiate proceedings by issuing a warrant of arrest against the vessel. Arrest of a vessel under Section 3 of the Act of 2017 thus cannot be exercised with respect to a vessel that is lying beyond the jurisdictional limits of this Court.

10. Having thus reminded myself of the scope and ambit of the jurisdiction which is the subject matter of the application before me, I now proceed to consider the contentions put forth by both sides.

11. The plaintiffs have admitted in the plaint that the alleged collision with the 2nd defendant vessel, which is the precursor to this



Admiralty Suit for enforcing the maritime claim, had occurred 48 nautical miles off the coast of the State of Kerala. Though the said fact by itself need not exclude the jurisdiction of this Court under admiralty, it is also admitted in the plaint that the 2nd defendant vessel while filing this Admiralty Suit was berthed in the Port of Nhava Sheva in Mumbai and thus was not within the jurisdictional limits of this Court. It is the specific contention of the counsel for the applicants/1st and 2nd defendants that the suit is barred by law and not maintainable before this Court for non compliance with the mandates of Section 3 of the Admiralty Act, 2017 discussed above. The plaintiffs have admitted that at the relevant point of time the vessel was anchored at Nhava Sheva port limits under the Jawaharlal Nehru Port, Mumbai.

12. This legal hurdle is attempted to be surmounted by the plaintiffs by contending that enacting of the Admiralty Act, 2017 does not take away or restrict the admiralty jurisdiction of coastal high courts and that the ratio of the judgment of the Supreme Court in **M.V.Elisabeth and others v. Harwan Investment and Trading**



Pvt. Ltd. (AIR 1993 Supreme Court 1014) still holds good. Placing reliance on the dictum in **M/s.Kuwait International Finance Company v. Lakshmi Sagar** [1980 KHC 412] it is contended that this Court had been exercising admiralty jurisdiction even prior to dictum laid down in **M.V.Elisabeth** (supra) and hence admiralty jurisdiction is inherent in this Court and is not vested pursuant to the dictum in **M.V.Elisabeth** (supra) or later controlled or restricted by the enactment of the Admiralty Act, 2017. This contention is attempted to be buttressed by the plaintiffs by tracing the admiralty jurisdiction inherently vested with this Court to the erstwhile Travancore Cochin High Court and to the Travancore Cochin High Court Act, 1125 (ME) and by relying on the dictum in **Pankajakshi (dead) Through LRs and others v. Chandrika and others** [2016 (1) KHC 777] wherein it had been held that if the letters patent, being the charter of the High Courts in British India, was a special law governing the High Courts untouched by any specific provision to the contrary in the CPC, so would the High Courts Act being the charter of the other High Courts similarly remain as special laws



untouched by any specific provision in the CPC. Thus according to the learned counsel for the respondents, the Admiralty Act, 2017 and Section 3 thereof cannot restrict the inherent admiralty jurisdiction vested with this Court to the territorial limits. It is also contended that the admiralty suit had been filed by the plaintiff specifically invoking Section 443 of the Merchant Shipping Act, 1958 and the jurisdiction vested with this Court under the said provision remains untouched by the Admiralty Act, 2017. Hence plaintiffs are entitled to seek detention of the vessel lying berthed in Nhava Sheva Mumbai. To examine this contention, it would be relevant to reproduce Section 443 of the Merchant Shipping Act, 1958, which reads as follows :

“443. Power to detain foreign ship that has occasioned damage

- (1) *Whenever any damage has in any part of the world been caused to property belonging to the Government or to any citizen of India or a company by a ship other than an Indian ship and at any time thereafter that ship is found within Indian jurisdiction, the High Court may, upon the application of any person who alleges that the damage was caused by the misconduct or want of skill of the master or any member of the crew of the ship, issue an order directed to any proper officer or other officer named in the order requiring him to detain the ship until such time as the owner, master or consignee thereof has satisfied*



any claim in respect of the damage or has given security to the satisfaction of the High Court to pay all costs and damages that may be awarded in any legal proceedings that may be instituted in respect of the damage, and any officer to whom the order is directed shall detain the ship accordingly.

- (2) *Whenever it appears that before an application can be made under this section, the ship in respect of which the application is to be made will have departed from India or the territorial waters of India, any proper officer may detain the ship for such time as to allow the application to be made and the result thereof to be communicated to the officer detaining the ship, and that officer shall not be liable for any costs or damages in respect of the detention unless the same is proved to have been made without reasonable grounds.*
- (3) *In any legal proceedings in relation to any such damage aforesaid, the person giving security shall be made a defendant and shall for the purpose of such proceeding be deemed to be the owner of the ship that has occasioned the damage.”*

Based on the above provision, it is contended that this Court can detain a foreign vessel found within the ‘Indian jurisdiction’ thereby meaning anywhere within the territorial limits of India, for the purpose of obtaining security with respect to a damage that had been occasioned to an Indian citizen. Reliance is placed on the dictum laid down by this Court in **Mayuree Naree** (supra) which considered the interplay of Section 443 of the Merchant Shipping Act, 1958 and the provisions of the Admiralty Act, 2017 and it was



concluded as follows:

“Now that the Admiralty jurisdiction of this Court is governed by the Admiralty Act, according to me, in the light of the said development, the question has to be resolved having regard to the provisions contained in the Admiralty Act. In terms of the provisions in the Admiralty Act, what is contemplated in an Admiralty suit is adjudication of maritime claims. Insofar as Section 443 of the Act is an independent provision which does not contemplate adjudication of maritime claims involved. According to me, proceedings initiated invoking the said jurisdiction need not be treated as an Admiralty suit. Of course, Section 5 of the Admiralty Act confers powers on the High Court to arrest a vessel in rem for the purpose of providing security against a maritime claim. But, the said power can be exercised only when The maritime claim is a subject matter of an admiralty proceedings as an interim measure pending admiralty proceedings.”

Based on the above conclusion in **Mayuree Naree** (supra) it is contended by the learned counsel for the plaintiffs that the prayer for arrest and sale of the 2nd defendant vessel made in the suit can still be sustained before this Court, notwithstanding the restriction in Section 3 of the Admiralty Act.

13. Admiralty Act, 2017 is a special statute vesting admiralty jurisdiction in certain High Courts to the exclusion of all others. Section 3 of the Admiralty Act, 2017 specifically vests admiralty



jurisdiction in the respective High Courts which is exercisable over territorial limits as specifically laid down in the said provision, viz., waters up to and including the territorial waters of the respective jurisdictions of the High court. Overlapping jurisdiction and multiple arrests by different High Courts over the same vessel though situated beyond the jurisdictional limits of the High Court arresting the same, which was a bane prior to the enactment of the Act, 2017 have been finally put to rest by Section 3 of the Admiralty Act, 2017. With such unambiguous vesting of jurisdiction by the the Admiralty Act, 2017 on certain High Court alone, to the exclusion of others and further clarification that *inter se* such High Courts which have vested in them the admiralty jurisdiction, the same can be exercised only over waters within their respective territorial limits, it is clear and settled that the dictum laid down in ***M.V.Elisabeth*** (supra) that all Indian High Courts have inherent admiralty jurisdiction to arrest and detail ships stands modified and varied. This future change in law was even conceived and permitted by the Supreme Court in ***M.V.Elisabeth*** (supra) itself by stating as follows:



“Maritime law is as much part of the general legal system as any other branch of the law. It is within the competence of the appropriate Indian courts to deal, in accordance with general principles of maritime law and the applicable provisions of statutory law, with all persons and things found within their jurisdiction. The power of the court is plenary and unlimited unless it is expressly or by necessary implication curtailed. Absent such curtailment of jurisdiction, all remedies which are available to the courts to administer justice are available to a claimant against a foreign ship and its owner found within the jurisdiction of the High Court concerned. This power of the court to render justice must necessarily include the power to make interlocutory orders for arrest and attachment before judgment. Power to enforce claims against foreign ships is an essential attribute of admiralty jurisdiction and it is assumed over such ships while they are within the jurisdiction of the High Court by arresting and detaining them. This jurisdiction can be assumed by the High Court concerned whether or not the defendant resides or carries on business or the cause of action arose wholly or in part within the local limits of its jurisdiction.”

Admiralty law in India has undergone a paradigm shift with the enactment of the Admiralty Act, 2017. The Admiralty jurisdiction as had been inherently vested with the High Courts as higher courts of record, stand modified and restructured by the enactment of Admiralty Act, 2017. Thus eventually, as foreseen by the Supreme Court in ***M.V.Elisabeth*** (supra) the erstwhile plenary and unlimited jurisdiction has been expressly curtailed by Section 3 of the Act.



The ratio laid down in ***M.V.Elisabeth*** (supra) that all High Courts in India being courts of unlimited jurisdiction and being a repository of all judicial power under the Constitution, except what is excluded, are competent to issue directions for arrest of foreign ship in exercise of statutory jurisdiction, or even otherwise, to effectuate the exercise of jurisdiction, now stands varied by virtue of Section 2 (1) (e) of the Admiralty Act, 2017. Section 2 (1) (e) defining High Court reads as follows:

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

In view of the above, the contention put forth by the learned counsel for the plaintiffs based on the dictum in ***M/s. Kuwait International Finance Company*** (supra) and ***Pankajakshi*** (supra) cannot be sustained. As regards the contention based on Section 443 of the Merchant Shipping Act, 1958 is concerned, as laid down by this Court in ***Mayuree Naree*** (supra), it is a procedural provision for the



enforcement of the substantive right of the parties which are rooted in general principles of law apart from statutes and for the enforcement of which a party aggrieved has a right to invoke the inherent jurisdiction of a superior court. Section 443 is a provision intended to provide a summary remedy against a non-indian ship causing damage to the property on account of reasons mentioned in the provision so as to enable the aggrieved person to obtain satisfaction of the claim or in the alternative to obtain security for satisfaction of the claim. It is trite that the provision under sub Section 1 of Section 443 of the Act could be invoked against a foreign vessel only when the vessel is within the territorial waters of India. When a foreign vessel is berthed in a port which is within the jurisdiction of another High Court it cannot be said that the vessel is within the territorial waters of this High Court. It has also been held in **Mayuree Naree** (supra) that the inherent admiralty jurisdiction of this Court will not extend beyond the territorial waters of the State of Kerala and the Union territory of Lakshadweep. Similarly, it has also been clarified by this Court in the said judgment that the definition of



High Court to be applied in the context of jurisdiction under Section 443 of the Merchant Shipping Act, 1958 is the second limb of the definition contained in Section 3 (15) of the Act, viz., the High Court within the limits of whose jurisdiction the vessel is for the time being situated. It has also been held that the jurisdiction of this Court under Sub Section (1) of Section 443 of the Act cannot be invoked by this Court when the vessel is situated within the territorial jurisdiction of another High Court and that the scheme of Section 443 does not indicate that exercise of concurrent jurisdiction by different High Court.

14. It follows that the provisions of the Merchant Shipping Act, 1958 cannot be availed for taking *in rem* action for arresting an offending vessel as long as it is not within the jurisdictional limits of this Court. The dictum in ***M.V.Elisabeth*** (supra) that international conventions relating to shipping form part of Indian law and hence powers under the International Convention on Arrest of Ships, 1952 could be exercised by this Court for assuming jurisdiction, cannot be invoked subsequent to the coming into force the Admiralty Act, 2017



and the lacunae, if any that existed in Indian law with respect to exercise of admiralty jurisdiction for arrest of foreign ships have been plugged by the enactment of the Admiralty Act, 2017. Section 3 of the Admiralty Act, 2017 does not confer jurisdiction in this Court to exercise admiralty jurisdiction over the 2nd defendant vessel lying in Nhava Sheva Port in Mumbai within the State of Maharashtra. It is an admitted fact that neither did the alleged collision of the 2nd defendant vessel with the fishing boat happen within the jurisdictional limits of this Court nor did the 2nd defendant vessel ever happen to be present or available within the jurisdictional limits of this Court. The reliance placed by the learned counsel for the plaintiffs on the dictum in ***Mrs. Raja Pushpam*** (supra) wherein the High Court of Madras had arrested a vessel for realisation of workmen's compensation dues does not help the case of the respondents/ plaintiff since the arrest was affected while the vessel was situated within the territorial limits of the said High Court. Similarly the contention put forth based on the dictum in ***Sabeeha Faikage*** (supra) that direction of the Hon'ble Supreme Court therein



to expedite the process of setting up an Indian Maritime Casualty Investigation Cell and to amend the Merchant Shipping Act, 1958 to ensure that the life of seafarers employed in different ships in high seas are made more secure and safe has no relevance or applicability to the facts and circumstances of the case or contentions put forth by the plaintiffs.

15. As has been discussed above, it is settled that a court's lack of jurisdiction can be a ground for rejecting a plaint under Order VII Rule 11 of the CPC and Rule 11(d) specifically allows for the rejection of a plaint if the suit is barred by any law, which includes the court's lack of jurisdiction. Order VII Rule 11 is mandatory in nature. If the jurisdiction of the court is found to be barred by any law, the application for rejection of the plaint as against applicants/defendants 1 and 2 has to be allowed.

Conclusion:

16. In view of the above discussion, I find that this Court does not have jurisdiction to entertain the suit as against defendants 1 and 2. Exercise of jurisdiction is barred as per the mandates of



Section 3 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017. Consequently the above suit against defendants 1 and 2 stands rejected. The Registry is directed to return the security deposit of INR One Crore which is currently lying deposited in an interest bearing account, along with accrued interest, to the counsel for 1st and 2nd defendants.

I.A.No.1 of 2024 is allowed. No costs.



Sd/-

**SYAM KUMAR V.M.
JUDGE**

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