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C.S.No.759 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2023

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THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.S.No.759 of 2010

M/s.Synergy Shipping Pvt. Ltd.,
Rep. by its Branch Manager,
G.R.Krishnamurthi,
No.97G/4/1-C, 4th Street,
Teacher's Colony (East),
Tuticorin - 8.

... Plaintiff

Vs.

M/s.Owners and parties Interested
in the vessel M.V.Anushree Fame (Ex-Royal Pisces),
Represented by its Master now berthed at
the Port of Tuticorin, Tamilnadu.

... Defendant

PRAYER: Plaint filed under Order XLII Rule III of the High Court
Original Side Rules for the following reliefs:

a) For a sum of Rs. 2,73,802/- together with interest on Rs.1,85,002/-
at the rate of 24% per annum from the date of plaint till the date of
realization in full;

b) For arrest and sale of the vessel M.V. Anushree Fame (Ex-Royal
Pisces), in as is where is condition, together with her engines, gears, tackles,
bunkers, machinery, apparel, plant, furniture and other paraphernalia
presently berthed at the port of Tuticorin, Tamilnadu;



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c) For a direction to adjust the sale proceeds against the suit claim with interest and costs;

d) For costs of this suit.

For Plaintiff : Mr.K. Bijai Sundar

For Defendant : Mr.S. Raghunathan

JUDGMENT

This suit has been filed under the Admiralty jurisdiction against the defendant vessel "M.V.Anushree Fame (Ex-Royal Pisces)" when the vessel was berthed at the port of Tuticorin, Tamilnadu. The plaintiff claims to be a steamer agent. The defendant vessel "M.V.Anushree Fame (Ex-Royal Pisces)" was earlier owned by M/s.SKS Logistics Ltd.. M/s.SKS Logistics Ltd., the ex-owner of the defendant vessel had appointed the plaintiff as a steamer agent when the defendant vessel was at Visakhapatnam and the plaintiff claims to have rendered certain services, including payment of Port dues on behalf of M/s.SKS Logistics Ltd. for the defendant vessel when the ship was named "Ex-Royal Pisces".



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2. As seen from the plaint averments, admittedly, the services rendered for the defendant vessel in the month of August, 2008 was on a request made by the ex-owners of the defendant vessel, M/s.SKS Logistics Ltd.. The defendant vessel sailed out of Visakhapatnam Port after taking the services of the plaintiff who had acted as a steamer agent for the said vessel at the instance of M/s.SKS Logistics Ltd., the ex-owners. According to the plaintiff, certain sums of money which were paid to the Visakhapatnam port trust by the plaintiff remains unpaid by the ex-owners of the defendant vessel. The defendant vessel also sailed out of the port of Visakhapatnam in the month of August, 2008 after taking the services of the plaintiff. Since the payment made by the plaintiff to the Visakhapatnam Port Trust was not reimbursed, the plaintiff has filed this suit under the Admiralty Jurisdiction, seeking arrest of the defendant vessel which had subsequently arrived at the port of Tuticorin, Tamil Nadu in the month of August, 2010 but admittedly under a different ownership.

3. The plaintiff has also admitted in the plaint that the ownership of the defendant vessel was changed subsequent to the services rendered by the plaintiff to the very same vessel in the year 2008 at the Port of

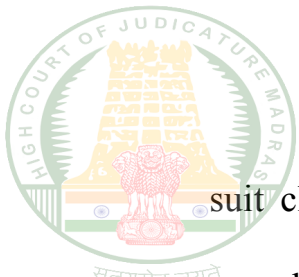


Visakhapatnam. In paragraph No.3 of the plaint, the plaintiff has admitted that the defendant vessel has been sold to a third party and the name of the defendant vessel has been changed from "M.V.Royal Pisces" to "M.V.Anushree Fame".

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4. The plaintiff claims maritime lien over the defendant vessel as they have claimed that since payments were made to the Port Trust towards the statutory dues, they have stepped into the shoes of the Port Trust and therefore, they are entitled to exercise maritime lien over the defendant vessel as port dues constitute a maritime lien. The suit claim has been filed for a sum of Rs.2,73,802/- together with interest on Rs.1,85,002/- at the rate of 24% per annum from the date of plaint till the date of realization in full.

5. The suit has also been filed for the arrest and sale of the defendant vessel. This Court in an interlocutory application filed along with the suit by its order dated 27.08.2010 had also arrested the defendant vessel. Subsequently, the arrest was ordered to be lifted by this Court on 31.08.2010 subject to the condition, the defendant furnishes security for the suit claim. In compliance with the said order, the defendant deposited the



suit claim to the credit of the suit by way of security and the defendant vessel sailed out of the Port of Tuticorin.

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6. A written statement has been filed by the defendant, disputing their liability to pay the suit claim. According to them, the plaintiff does not have any maritime lien over the defendant vessel and they cannot also step into the shoes of the port trust and claim maritime lien. They have also contended that in view of the change of ownership of the defendant vessel, the suit filed by the plaintiff is not maintainable as the maritime claim gets extinguished by the change of ownership. They have also made a counter claim against the plaintiff in the written statement for the alleged wrongful arrest of the defendant vessel made at the behest of the plaintiff.

7. A counter claim for a sum of Rs.10,00,000/- was made by the defendant against the plaintiff as seen from the written statement and the defendant has also paid Court fees for the said counter claim.

8. Based on the pleadings of the respective parties, this Court has framed the following issues:



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"1. Whether the suit is maintainable in the Admiralty jurisdiction of this Court?

2. Whether the liability of the defendants can be denied because of the name change of the vessel, when the vessel is purchased after filing of the suit?

3. Whether the plaintiffs have the maritime lien on the vessel M.V. Anushree Fame in respect of the supplies alleged to have been made by the plaintiff?

4. Does not the claim and lien on the vessel to which service were rendered by the plaintiff constitute maritime claim and lien?

5. Whether the subsequent change in ownership vitiate the rights of the plaintiff who entitled to its lawful dues?

6. Whether the part payment over the invoices entitle the plaintiff to recover balance dues also?

7. Whether the plaintiff has fulfilled its obligation to hold the defendants i.e, for its breach and be entitled to the suit claim?



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8. *Whether the plaintiff is entitled to claim interest at 24%p.a.?*

9. *Whether the defendants has got any right to place its defence in the suit claim in the absence of any authority for doing so?*

10. *To what other reliefs, the parties are entitled to?"*

9. The plaintiff's authorized representative Mr.G.R.Krishnamurthi (PW1) was examined as a witness before the learned Additional Master-IV of this Court. He has also filed a proof affidavit, reiterating the averments contained in the plaint. Through, PW1, the following documents were marked as exhibits:

"Ex.P1 is the Office copy of the Letter issued by the plaintiff dated-12.8.2008.

Ex.P2 is the Original of the Permission granted by the Tuticorin Port Trust dated-13.8.2010.

Ex.P3 is the Original of the Certificate issued by the Master of the defendant vessel dated-23.8.2008.



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Ex.P4 is the Original of the Certificate issued by the Master of the defendant vessel dated-23.8.2008.

Ex. P5 is the Original of the Invoice raised by the plaintiff dated-11.9.2008.

Ex.P6 is the Original of the Invoice raised by the plaintiff dated-11.9.2008.

Ex. P7 is the Original of the Invoice raised by the plaintiff dated-12.9.2008. (Learned counsel for the defendant objected Ex.P5 to Ex. P7 on the ground that these invoices were raised by the plaintiff on SKS Logistics Ltd, Mumbai who are the erstwhile owners of the vessel and not the defendant and therefore the said invoices would not be by the defendant and cannot therefore be marked exhibits.)

Ex.P8 (Series 11 Nos) is the Photocopy of the Vouchers and Receipts - series. (For the first 5 sheets there is no objection for the remaining 8 sheets, the counsel for the defendant objected to the marking of the same as they are only photocopies.)



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Ex.P9 is the Original Statement of accounts. (The counsel for the defendant objected to the marking of these documents since the statement of accounts was raised only on SKS Logistics Ltd, the erstwhile owners and not on the defendants.)

Ex.P10 is the Original of Board Resolution."

10. The plaintiff's witness (PW1) was also cross examined by the defendant's counsel. The defendant's witness Mr.C.N.Sudarsanan (DW1) who is its Senior Vice President (Technical) has filed his proof affidavit, reiterating the contents of the written statement. Through DW1, two documents were marked as Exhibits and they are as follows:

- a) Proof affidavit (Ex.D1);
- b) Board Resolution dated 22.09.2021 (Ex.D2).

11. The defendant's witness (DW1) did not present himself before the learned Additional Master IV for cross examination by the plaintiff's counsel despite several opportunities granted by the learned Additional Master IV for the same. Hence, the learned Additional Master IV has closed



the evidence of the defendant. The learned counsel for the defendant has also submitted during the course of his arguments that due to the old age of the defendant's witness, he is not in a position to make himself available for cross examination and therefore, with the available evidence, he is making his submissions.

12. Heard, Mr.K. Bijai Sundar, learned counsel for the plaintiff and Mr.S. Raghunathan, learned counsel for the defendant.

13. The learned counsel for the plaintiff reiterated the contentions of the plaintiff as found in the plaint. However, the learned counsel for the defendant at the outset would submit that the suit filed by the plaintiff is not maintainable in view of the fact that the ownership of the defendant vessel has changed, which is also admitted by the plaintiff and even assuming there exists a maritime lien, the said maritime lien has got extinguished by the lapse of more than six months from the date when the cause of action arose for the plaintiff to file the present suit.



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Discussion:

14. The plaintiff claims that they have a maritime lien over the defendant vessel as they claim that they have paid port dues, which will fall under the category of maritime lien, which attaches to the vessel despite the fact that the ownership of the vessel has changed. The plaintiff also contends that they will step into the shoes of the port trust since they have paid the port dues on behalf of the defendant vessel and therefore, they have a right to exercise their maritime lien over the defendant vessel.

15. The plaintiff has filed documents along with the plaint which they claim are sufficient to prove that they have paid the port dues for the defendant vessel which entitle them to exercise their maritime lien over the defendant vessel. However, on the contrary, the learned counsel for the defendant would, at the outset, submit that even assuming that the plaintiff is having a maritime lien, however, the said maritime lien has got extinguished as more than six months has elapsed from the date when the cause of action for the plaintiff arose for the suit claim. He would further submit that as per the International Convention on Maritime Liens and



Mortgages, 1993, the limitation period for exercising maritime lien is six months and since the plaintiff has not filed the suit within six months from the date when the cause of action arose, the present suit is not maintainable as it is barred by limitation.

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16. The learned counsel for the defendant would further submit that the plaintiff cannot step into the shoes of the port trust and if at all any maritime lien can be exercised it can be only by the Port themselves and not by any third party even if the said third party had paid the port dues on behalf of the vessel. He would also submit that the arrest of the defendant vessel obtained by the plaintiff before this Court is a wrongful arrest since the present owners of the defendant vessel are no way connected with the suit claim. He would further submit that only after verifying the title, the present owners have purchased the defendant vessel and therefore, they are a bonafide purchaser, having paid valuable sale consideration. The learned counsel for the defendant would further submit that there is no necessity for the defendant to produce oral and documentary evidence in view of the admitted fact as seen from the plaint and affidavit that the defendant vessel was sold to the present owners subsequent to the alleged services rendered



by the plaintiff to the ex-owners of the defendant vessel.

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17. This Court had framed several issues. However, the plaintiff will have to first satisfy whether the admiralty suit is within the period of limitation. In case, the plaintiff fails to satisfy that the admiralty suit is filed within the period of limitation, there is no necessity for this Court to deal with other issues framed by this Court.

18. To institute an admiralty action, the claim must be a maritime claim falling within the purview of Section 4 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017. In the instant case, since the claim arises out of a cause of action in the year 2008, the International Convention applies. But, more or less, the category of maritime claims enumerated in Section 4 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 which came into effect from 09.08.2017 are similar to the enumerated maritime claims mentioned in the International Conventions. All maritime claims are not maritime liens. But, all maritime liens are maritime claims. Maritime lien is one of the most striking peculiarities of admiralty law. It gives rights against a vessel. The said right



survives despite the sale of the offending ship. Maritime lien is a privileged lien which has a priority over other liens under the admiralty jurisdiction.

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The maritime lien attaches to the ship and it travels with the ship irrespective of change of ownership, but, the lien extinguishes when the ship has been sold through a Judicial sale.

19. The present suit has been filed prior to the coming into force of Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017. Hence, the said Act may not be applicable since it does not stipulate that it is retrospective. However, prior to the coming into force of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, the Courts in India were adopting the International Conventions whenever there is no specific Indian Statute pertaining to a particular subject available under the admiralty law. Neither the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 nor any of the International Maritime Conventions specifically defines maritime lien. However, India is a signatory to the International Convention on Maritime Liens and Mortgages, 1993 (1993 Convention) which recognises the following claims against the owner, demise charterer, manager or operator of the vessel as a



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maritime lien:

"a) claims for wages and other sums due to the master, officers and other members of the vessel's complement in respect of their employment on the vessel, including costs of repatriation and social insurance contributions payable on their behalf;

(b) claims in respect of loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the vessel;

(c) claims for reward for the salvage of the vessel;

(d) claims for port, canal, and other waterway dues and pilotage dues;

(e) claims based on tort arising out of physical loss or damage caused by the operation of the vessel other than loss of or damage to cargo, containers and passengers' effects carried on the vessel."

20. The plaintiff claims that since they have paid the port dues, they fall within the purview of clause (d), referred to supra and therefore, they



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claim that they are entitled to exercise maritime lien over the defendant vessel despite the change of ownership. However, as seen from Article 6 of the International Convention on Maritime Liens and Mortgages, 1993, maritime lien gets extinguished (i) after a period of six months from the time when the claims secured thereby arose unless, prior to the expiry of such period, the vessel has been arrested or seized, such arrest or seizure leading to a forced sale; or (ii) at the end of the period of 60 days following the sale to a bonafide purchaser of the vessel, such period to commence on the date on which the sale is registered in accordance with the law of the State in which the vessel is registered following the sale; whichever period expires first.

21. Article 6 of the International Convention on Maritime Liens and Mortgages, 1993 is extracted hereunder:

" *Other maritime liens*

Each State Party may, under its law, grant other maritime liens on a vessel to secure claims, other than those referred to in article 4, against the owner, demise charterer, manager or operator of the vessel, provided that such liens:



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a) shall be subject to the provisions of articles 8, 10 and 12;

(b) shall be extinguished

(i) after a period of 6 months, from the time when the claims secured thereby arose unless, prior to the expiry of such period, the vessel has been arrested or seized, such arrest or seizure leading to a forced sale; or

(ii) at the end of a period of 60 days following a sale to a bona fide purchaser of the vessel, such period to commence on the date on which the sale is registered in accordance with the law of the State in which the vessel is registered following the sale;

whichever period expires first; and

(c) shall rank after the maritime liens set out in article 4 and also after registered mortgages, "hypothèques" or charges which comply with the provisions of article 1."



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22. Assuming, the plaintiff has got a maritime lien, even then, the present suit is barred by the law of limitation as per Article 6 of the International Convention on Maritime Liens and Mortgages, 1993 as admittedly the suit has been filed by the plaintiff beyond the period of six months from the date when the cause of action arose for the plaintiff for filing the suit. Even under the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, which came into force on 09.08.2017, the maritime lien gets extinguished after the expiry of a period of one year from the date when the cause of action arose. Section 9 (2) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, which deals with the limitation period for exercising the maritime lien is reproduced hereunder:

"9. Inter se priority on maritime lien -

(1) Every maritime lien shall have the following order of inter se priority, namely

(a) claims for wages and other sums due to the master, officers and other members of the vessel's complement in respect of their employment on the vessel, including costs of repatriation and social insurance contributions payable on their behalf;



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(b) claims in respect of loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the vessel;

(c) claims for reward for salvage services including special compensation relating thereto;

(d) claims for port, canal, and other waterway dues and pilotage dues and any other statutory dues related to the vessel; (e) claims based on tort arising out of loss or damage caused by the operation of the vessel other than loss or damage to cargo and containers carried on the vessel.

(2) The maritime lien specified in sub-section (1) shall continue to exist on the vessel notwithstanding any change of ownership or of registration or of flag and shall be extinguished after expiry of a period of one year unless, prior to the expiry of such period, the vessel has been arrested or seized and such arrest or seizure has led to a forced sale by the High Court:

Provided that for a claim under clause (a) of sub-section (1), the period shall be two years from the date on which the wage, sum, cost of repatriation or social insurance contribution, falls due or becomes payable."



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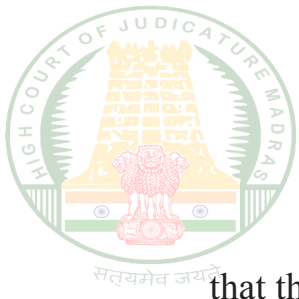
23. In the case on hand, the plaintiff who is a steamer agent have themselves admitted in the plaint dated 26.08.2010 that the vessel "Ex-Royal Pisces" for which the plaintiff claims to have rendered services in the month of August, 2008 has changed its ownership and has been sold to a third party and the name of the vessel has been changed to "M.V.Anushree Fame" from "M.V.Royal Pisces".

24. Admittedly, the dues of the plaintiff was not paid by the ex-owners of the defendant vessel by name M/s.SKS Logistics Ltd. in the month of August, 2008 when the cause of action arose for the plaintiff in respect of the suit claim. The suit was filed by the plaintiff against the defendant vessel only in August, 2010 i.e., after more than 2 years from the date when the cause of action arose, which is beyond the limitation period prescribed under Article 6 of the International Convention on Maritime Liens and Mortgages, 1993 and is also beyond the period prescribed under the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 though the legislation is not applicable for the case on hand as the said legislation came into force only with effect from 09.08.2017. The maritime



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lien claimed by the plaintiff has got extinguished by the lapse of more than six months from the date when the cause of action arose for the plaintiff to initiate admiralty action for the arrest and sale of the defendant vessel. The plaintiff has also not filed the suit within a period of 60 days from the date of sale of the defendant vessel to the present owners. Having admitted to the change of ownership in the plaint, Article 6 (b) (ii) of the International Convention on Maritime Liens and Mortgages, 1993 gets attracted and the suit ought to have been filed within 60 days from the date when the sale of the defendant ship to the new owners has been registered in accordance with the law of the State in which the vessel is registered. Section 9 (2) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 also makes it clear that the maritime lien excepting for crew claim for which the limitation period is two years shall be extinguished after the expiry of a period of one year unless prior to the expiry of such period, the vessel has been arrested or seized, and such arrest or seizure has lead to a forced sale by the High Court. In the case on hand, admittedly, arrest of the defendant vessel was obtained only on 27.08.2010, i.e., two years after the date on which the cause of action for the suit claim arose.



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25. For the foregoing reasons, this Court is of the considered view that the suit is hopelessly barred by the law of limitation as the maritime lien claimed by the plaintiff has got extinguished by the lapse of more than the period prescribed under Article 6 of the International Convention on Maritime Liens and Mortgages, 1993.

26. With regard to the counter claim made by the defendant in its written statement, the defendant has not let in any oral and documentary evidence to prove that they had suffered loss on account of the wrongful arrest of the defendant vessel. The defendant's witness (DW1) though had filed proof affidavit, reiterating the contents of the written statement, he did not make himself available for cross examination by the plaintiff's counsel despite several opportunities having been granted by the learned Additional Master IV. Due to the same, the learned Additional Master IV had to close the evidence of the defendant. The learned counsel for the defendant had also submitted during the course of his arguments that only due to the old age of the defendant's witness (DW1), he was not in a position to continue his deposition. Unless and until, there is any iota of evidence to prove that the defendant had suffered losses on account of wrongful arrest of the



defendant vessel, the question of awarding any counter claim in favour of

the defendant will not arise. The learned counsel for the defendant also did

not persuade this Court for the same during the course of his arguments.

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27. In view of the finding rendered by this Court that the suit is barred by limitation on account of the extinguishment of the maritime lien, there is no necessity for this Court to adjudicate on the remaining issues framed by this Court viz., the issues No.2 to No.10. The issue No.1, viz., whether the suit is maintainable in the admiralty jurisdiction of this Court, is answered against the plaintiff by holding that the suit is not maintainable, in view of the finding rendered by this Court that the maritime lien claimed by the plaintiff has got extinguished as per Article 6 of the International Convention on Maritime Liens and Mortgages, 1993 and as per Section 9 (2) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, though the said provision may not be applicable to the case on hand as the said legislation came into force only with effect from 09.08.2017, whereas, the cause of action for the suit arose in the year 2008 itself and the suit was filed only in the month of August, 2010 beyond the stipulated period.



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28. In the result, there is no merit in this suit and the suit as well as the counter claim is dismissed. No Costs. By an order dated 31.08.2010 in A.No.4772 of 2010 in C.S.No.759 of 2010, an order was passed directing the respondent / defendant to deposit a bankers cheque taken by the defendant for a sum of Rs.2,73,802/- favouring the Registrar General of this Court by way of security for the release of the defendant vessel. The defendant has also deposited the bankers cheque for the aforementioned sum favouring the Registrar General of this Court in terms of the order dated 31.08.2010 passed in A.No.4772 of 2010 in C.S.No.759 of 2010. The learned counsel for the defendant seeks payment out of the said money in view of the dismissal of this suit. This Court grants liberty to the respondent / defendant to file an appropriate payment out application, seeking payment out of the funds lying to the credit of this suit and once such an application is filed this Court will pass appropriate orders.

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Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
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