

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 12<sup>TH</sup> DAY OF JULY, 2024**

**PRESENT**

**THE HON'BLE MRS. JUSTICE K.S.MUDAGAL**

**AND**

**THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL**

**ORIGINAL SIDE APPEAL No.10/2024**

**IN**

**CIVIL PETITION NO.56/2024**

**BETWEEN:**

MV GLOBAL EMERALD (IMO 8982888)  
A FOREIGN VESSEL FLYING THE  
FLAG OF PANAMA AND HER OWNER AND  
ALL OTHER PERSONS CONNECTED  
AND /OR INTERESTED IN HER  
A CHEMICAL/OIL TANKER FLYING  
TOGETHER WITH HER HULL,TACKLE  
BOATS, MACHINERY, EQUIPMENT,  
APPURTENANCES & ALL OTHER PARAPHERNALIA  
PRESENTLY AT THE PORT AND HARBOUR  
OF NEW MANGALORE WITHIN THE TERRITORIAL  
WATERS OVER WHICH THIS HONBLE COURT  
EXERCISES JURISDICTION  
REP. BY ITS AUTHORISED REPRESENTATIVE  
MR. CHIDANANDA.M

...APPELLANT

(BY SRI V.K.RAMABHADRAN, SENIOR COUNSEL FOR  
SRI VENU K.V. & SRI NOUSHAD A.K, ADVOCATES)

**AND:**

1. MECK PETROLEUM DMCC  
A COMPANY INCORPORATED  
UNDER THE LAWS OF UAE  
HAVING ITS OFFICE AT JLT-PH1-RET-15  
JUMEIRAH LAKE TOWERS, DUBAI, UAE  
REP. BY ITS POWER OF ATTORNEY HOLDER  
MR SUNIL KUMAR D

2. NEW MANGALORE PORT AUTHORITY  
CAPTAIN S.R.PATTANAYAK  
NEW MANGALORE PORT AUTHORITY  
PANAMBUR, MANGALURU – 575 010  
D.K.DISTRICT, KARNATAKA ...RESPONDENTS

(BY SRI V.J.MATHEW, SENIOR COUNSEL FOR  
SRI ARJUN RAO, ADVOCATE FOR R1;  
SRI RAYAPPA Y HADAGALI, ADVOCATE FOR R2)

THIS ORIGINAL SIDE APPEAL IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT, 1961 AND SECTION 14 OF THE ADMIRALTY (JURISDICTION AND SETTLEMENT OF MARITIME CLAIMS) ACT, 2017 PRAYING TO SET ASIDE THE ORDER DATED 16.04.2024 (ANNEXURE 'A') PASSED BY THE LEARNED SINGLE JUDGE IN CIVIL PETITION NO.56/2024 ETC.

THIS ORIGINAL SIDE APPEAL HAVING BEEN HEARD AND RESERVED ON 20.06.2024, COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, **K.S.MUDAGAL.J.**, DELIVERED THE FOLLOWING:

### **JUDGMENT**

Challenging the order on I.A.No.7/2024 and I.A.No.2/2024 in C.P.No.56/2024 passed by the learned Single Judge, the respondent in the said case has preferred this appeal.

2. By the impugned order, the learned Single Judge has rejected the applications filed by the present appellant for vacating the interim order of arrest of appellant vessel, for release of the same and for rejection of C.P.No.56/2024 as barred by law.

3. Respondent No.1 filed C.P.No.56/2024 against the appellant seeking recovery of Rs.17,84,91,641.64/- with

interest at 2% per month from the date of institution of the suit till its realization and for arrest of the said vessel and sale of the same for recovery of the said claim. Respondent No.1 claimed that on the basis of the order placed by one Mr.Syed, HAWL AL ALAM Group of Companies on behalf of the owners of the appellant, it supplied 3130 (Annexure-G) metric tons of Very Low Sulfur Fuel Oil (VLSFO). The parties are governed by International Maritime Convention and the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, (for short 'Admiralty Act').

4. Respondent No.1 further claimed that the bunker confirmation and payment terms were accepted by the purchasers on 04.07.2023. It was contended that initially the order was placed in the name of M.V.Global Dominance (Vessel). On purchasing bunkers from respondent No.1, the vessel was changed from M.V.Global Dominance to M.V.Global Emerald. Respondent No.1 claimed that despite supply of bunkers, payments were not made within the stipulated time. Thus sought for the aforesaid reliefs against the present appellant.

5. Respondent No.1 filed I.A.No.2/2024 under Order XXXIX Rules 1, 2 and 3 read with Section 5 of the Admiralty

Act, seeking arrest of the appellant vessel, I.A.No.3/2024 for an order detaining/restraining the appellant ship from moving out of New Mangalore Port or the waters outside the jurisdiction of the Court and I.A.No.4/2024 seeking valuation of the said vessel through surveyors and for public auction of the same for recovery of their claims.

6. The learned Single Judge by order dated 01.02.2024 passed interim order of arrest of the vessel reserving liberty to the appellant to seek modification of the said order.

7. The appellant after its appearance filed I.A.No.7/2024 for vacating the interim order of arrest of vessel and for immediate release of the vessel. Similarly, the appellant filed I.A.No.10/2024 before the learned Single Judge seeking under Order VII Rule 11 of CPC for rejection of C.P.No.56/2024 on the ground that the same is barred by law. In I.A.No.10/2024 it was contended that similar petition filed by respondent No.1 in C.P.No.503/2023 was withdrawn without reserving liberty, therefore C.P.No.56/2024 was barred by law.

8. In I.A.No.7/2024 for vacating the interim order, it was contended that there was no privity of contract between the appellant and respondent No.1 and the documents relied on by respondent No.1 were concocted. Those applications were contested by respondent No.1. The learned Single Judge by the impugned order rejected both applications.

9. In this appeal the appellant has filed I.A.No.2/2024 to vacate the interim order of arrest of the vessel passed by the learned Single Judge. I.A.No.5/2024 is filed seeking appointment of independent marine surveyor to inspect the appellant vessel to ascertain the capacity of bunker fuel tanks on board. I.A.No.3/2024 and I.A.No.6/2024 are filed seeking stay of the proceedings in C.P.No.56/2024 and stay of I.A.No.11/2024 filed in C.P.No.56/2024 for sale of the appellant vessel respectively. The same were opposed by respondent No.1.

10. In this appeal, New Mangalore Port Authority, Panambur, Mangaluru in whose waters the appellant vessel is arrested got impleaded itself as respondent No.2.

11. Heard both sides.

**Gist of submissions of Sri V.K.Ramabhadran, learned Senior Counsel appearing for Sri Venu K.V. and Sri Noushad A.K., learned Counsel on record for the appellant:**

12(i) The petition being one for recovery of alleged contractual liability of Rs.17,84,91,641.64, is a commercial dispute within the meaning Section 2(C)(iii) of Commercial Courts Act, 2015. For such claim, suit shall be presented before the Commercial Court, therefore C.P.No.56/2024 under the provisions of Admiralty Act is not maintainable.

(ii) The owner of the appellant are Global Emerald Shipping Lines. Neither they placed any order with respondent No.1 for supply of bunkers nor had authorized Mr.Syed, HAWL AL ALAM Group of Companies to enter into any such transaction. Therefore there is no privity of contract between the appellant and respondent No.1.

(iii) Order XI Rule 5 of CPC as applicable to the commercial suits, bars receiving any document subsequent to the filing of the suit, (subsequent to issuance of the notice) unless the plaintiff satisfies the cause for non production of the same at the earliest and not mentioning the same in the plaint. Therefore, the learned Single Judge was in error in relying on the documents produced before him under I.A.No.9/2024. Even as per the delivery note the same was

issued by Gulf Petrol Supplies LLC and not respondent No.1 MECK Petroleum DMCC.

(iv) The appellant ship's bunker capacity is 468.92 metric tons. That itself falsifies the claim of supply of 3111.232 metric tons of VLSFO. The learned Single Judge was in error in relying on the document dated 03.03.2024 purportedly issued by M/s.Ashraf Al Sharif Trading Refined Oil Products LLC confirming the interim order of arrest of the appellant/vessel.

(v) Learned Single Judge was in error in relying on the judgment in **Socar Turkey Petrol Enerji Dagitim v. M.V.Amoy Fortune [2018 SCC OnLine Bom 1999]** and other judgments as they were not applicable to facts of the present case. The impugned order rejecting the application under Order XXXIX Rule 4 of CPC is illegal and perverse.

13. In support of his submissions he relies on the following judgments:

- (i) **Sudhir Kumar v. Vinay Kumar G G.**<sup>1</sup>
- (ii) **Socar Turkey Petrol Enerji Dagitim v. M.V.Amoy Fortune**<sup>2</sup>

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<sup>1</sup> (2021) 13 SCC 71

<sup>2</sup> 2018 SCC OnLine Bom 1999

**Gist of submissions of Sri V.J.Mathew, learned Senior Counsel appearing for Sri Arjun Rao, learned Counsel on record for respondent No.1:**

14(i) The appellant has challenged two different orders passed on I.A.No.7/2024 and I.A.No.10/2024 in a single appeal, therefore the appeal is not maintainable. Respondent No.1 has satisfied that it has a maritime claim covered under Section 4(1)(l) of Admiralty Act. Moreover the said Act takes precedence over the Commercial Courts Act, therefore the petition before the learned Single Judge was not barred by any law.

(ii) Even assuming that there is an arbitration clause in the agreement, that does not bar any action in *rem* for arrest of the appellant vessel. Annexures-G, N, K and J the bunker confirmation, terms and conditions, invoice addressed to the owner of the vessel and the bunker delivery receipt respectively, show that the bunker was supplied to the appellant/vessel. With such *prima facie* material, the learned Single Judge was justified in holding that the defence of want of privity of contract has to be established in trial. As per maritime trade practice, direct relationship between respondent No.1 and the owner of the vessel is not required and the documents Annexures-R3 and R6 produced by the



appellant were mutually contradictory and respondent No.1 was not party to Annexures-R3, R4 and R5.

(iii) The appellant did not produce the IGM (Import General Manifest) before Customs/Port at the discharge Port to show that fuel supplied was carried as cargo. The appellant did not produce vessel, log books maintained by Master, Chief Officer and Chief Engineer which would have shown all the activities taken place on the board of the appellant. Annexure-W produced by respondent No.1 before the learned Single Judge showed that Annexures-R3 to R6 produced by the appellant were forged one. Appellant has suppressed the fact of respondent No.1 filing I.A.No.12/2024 before the learned Single Judge to initiate inquiry against the appellant for perjury.

(iv) Lack of fuel tank capacity of the appellant vessel is not a criteria for a trader engaged in bunker supply to determine whether to supply bunker to vessel or not. Anyway that has to be decided on trial. As per Chapter VII Rule 1 of the High Court of Karnataka Rules, 1959 the petition filed under the provisions of the Admiralty Act is maintainable. There is no bar of jurisdiction on the ground of availability of forum of commercial Courts and in the absence of any other

rules formulated by the High Court of Karnataka providing for such proceedings. The impugned order does not suffer the vice of arbitrariness or perversity, hence the appeal is liable to be dismissed.

15. In support of his submissions, he relies on the following judgments:

- (i) **J.S. Ocean Liner LLC v. MV Golden Progress**<sup>3</sup>
- (ii) **Siem Offshore Redri AS v. Altus Uber**<sup>4</sup>
- (iii) **MV Free Neptune & Anr. v. DLF Southern Towns Pvt. Ltd. and Ors.**<sup>5</sup>
- (iv) **Grace Young International v. Owners and Parties interested in vessel, MV Ocean Rose** <sup>6</sup>

**Submissions of Sri Rayappa.Y. Hadagali, learned Counsel for respondent No.2:**

16(i) The appellant/vessel is aged more than 20 years and the same is arrested in the port waters of respondent No.2 since 02.02.2024. Due to its age, lack of maintenance there is a potential threat of sinking or wrecking of the vessel due to bad weather, cyclone etc. That is the potential threat to the environment and ecology due to oil spillage and wrecking removal, putting the port to severe risks as the port

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<sup>3</sup> 2007 SCC OnLine Bom 69

<sup>4</sup> 2018 SCC OnLine Bom 2730

<sup>5</sup> 2011 SCC OnLine Ker 3695

<sup>6</sup> (Adml Suit NO.1/2022) Kerala HC

is established over 50 years spending thousands of crores of rupees and the annual turnover of the port is Rs.860 crores. If any untoward incident takes place in the course of arrest of the vessel, all such investment goes waste and that poses severe ecological threats.

(ii) The appellant and respondent No.1 with an intention to make unlawful claims against respondent No.2, seem to have filed collusive proceedings. If at all Court agrees with the appellant's contention that the vessel is fit and seaworthy, the Court may direct the appellant to furnish bank guarantee and indemnity to respondent No.2 for such losses.

17. During the course of arguments Sri V.K.Ramabhadran, learned Senior Counsel appearing for Sri Venu K.V. and Sri Noushad A.K, learned Counsel on record for the appellant restricted the challenge only to the impugned order so far it relates to I.A.No.7/2024. He submits that challenge to the impugned order so far it relates to I.A.No.10/2024 for rejection of the petition is not pressed. Therefore this appeal survives only to examine whether the learned Single Judge was in error in rejecting I.A.No.7/2024 filed for vacating the interim order of arrest of the vessel.

18. On hearing both sides and examining the records, the points that arise for consideration are:

- (i) Whether the impugned order of arrest of appellant/vessel is sustainable?
- (ii) Whether I.A.Nos.2, 3, 5 and 6 of 2024 deserve to be allowed?

### **Analysis**

#### **Reg. Point Nos.1 & 2:**

19. As already noted, respondent No.1 claims that on the order placed by one Mr.Syed of HAWL AL ALAM Group of Companies on behalf of the appellant/vessel, it supplied bunkers for 3111.232 metric tons of VLSFO on 04.07.2023 at Fujairah Port, but the appellant failed to pay the value of the said product, thus respondent No.1 sought recovery of Rs.17,84,91,641.64 as a maritime claim and also sought arrest of the vessel for recovery of the said amount.

20. The learned Single Judge exercising powers under Order XXXIX Rules 1, 2 & 3 of CPC read with Section 5 of the Admiralty Act granted interim order of arrest of the vessel and by the impugned order rejected I.A.No.7/2024 filed by the appellant under Order XXXIX Rule 4 of CPC for vacating the said interim order.

21. It is a settled law that such order being a discretionary order cannot be interfered by the Appellate Court unless it is shown that the said order suffers the vice of perversity or arbitrariness. It is also settled law that to grant an interim order under Order XXXIX Rules 1 and 2 of CPC the following factors have to be satisfied:

- (i) *Prima facie* case of the right of the applicant which means there is *prima facie* case to go for trial;
- (ii) the balance of convenience is in favour of the applicant;
- (iii) If interim order is not granted, the applicant is likely to suffer irreparable injury. That means if ultimately the applicant succeeds in the main matter there is no likelihood of the applicant reaping the benefits of final order passed in his favour.

22. It is no doubt true that *prima facie* case includes the maintainability of the suit or the petition. The petition before the learned Single Judge is filed under Section 5 read with Section 3 of the Admiralty Act and Order VII Rule 1 read with Section 26 of CPC. Section 5 of the Admiralty Act empowers the High Court for ordering arrest of any vessel within its jurisdiction for the purpose of providing security against a maritime claim which is a subject of an admiralty

proceeding. Respondent No.1's claim is covered under Section 4(1)(I) of the Admiralty Act which says that High Court may exercise jurisdiction to hear and determine any question on a maritime claim against any vessel arising out of any bunker fuel, equipment (including containers) supplied or services rendered to the vessel etc. Therefore the claim before the learned Single Judge was clearly a maritime claim.

23. Though the appellant's Counsel contended that the claim constitutes a commercial dispute and therefore the claim lies before the Commercial Court in the form of a suit, ousting the jurisdiction of the High Court, he could not demonstrate how the jurisdiction of the High Court is barred. Section 3 of the Admiralty Act which is relevant on this point reads as follows:

**"3. Admiralty jurisdiction.—**(1) 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)."

Reading of the above provision shows that the High Court alone has exclusive jurisdiction to deal with the maritime claim covered under Sections 4 and 5 of the Admiralty Act. Though the definition of commercial dispute under Section 2(1)(c)(iii) of the Commercial Courts Act covers issues relating to admiralty and maritime law, in the said Act, there is nothing barring the jurisdiction of the High Court on the issue relating to the arrest of the vessel under Section 5 of the Admiralty Act.

24. The Commercial Courts Act was enacted in 2015. Subsequent to that the Admiralty Act was enacted and came into force with effect from 01.04.2018 vide S.O.767(E), dated 22.02.2018. Section 3 of the Admiralty Act employed the language that the jurisdiction in respect of maritime claims under the Act **shall** vest in the High Courts which shows that Section 3 of the Admiralty Act takes precedence over Sections 6 and 7 of the Commercial Courts Act. Therefore there is no merit in the contention that the petition in C.P.No.56/2024 was not maintainable.

25. The other contention was that there was no privity of contract between the appellant and respondent No.1. To

show that the order was placed with it for supply of 3111.232 metric tons of VLSFO for and on behalf of the appellant, respondent No.1 relied on Annexures-G and J. Annexure-G is the bunker confirmation issued by respondent No.1 to Global Emerald Shipping Lines Incorporated and HAWL AL ALAM Diesel Lube Oil and Petroleum products for supply of 3130 metric tons of VLSFO for the appellant-vessel. Annexure-J is the bunker delivery note dated 04.07.2023 issued by respondent No.1 to the appellant for supply of 3111.232 metric tons of VLSFO for the appellant vessel. The said document bears the seal of the appellant also.

26. The appellant in the affidavit filed by its representative in support of I.A.No.7/2024 contended that it purchased 3000 metric tons of VLSFO cargo (not the bunker) from one Ahmed Al Sharif on behalf of M/s.Ashraf Al Sharif Refined Oil Trading LLC and made the payment of AED 54,00,000/- on 05.07.2023 which was evident by Annexures-R3 to R5. To counter that, respondent No.1 produced Annexure-W said to be issued by Ashraf Al Sharif, the very same person mentioned in Annexures-R3 to R6. In Annexure-W, said Ashraf Al Sharif stated that Annexures-R3 to R6 were not issued by them. It was further stated in the said



document that they did not deal with the appellant or Synergy Petrochem FZE and they did not have any contractual relationship. They were licensed only for offshore refined oil product trading. They claimed that Annexures-R3 to R6 were the forged documents. Learned Single Judge on considering such rival documents rightly opined that respondent No.1 has an arguable case, therefore interim order has to continue.

27. It was argued before this Court that though in Annexure-W, the author of the document said that they are contemplating to prosecute the appellant for forgery, so far nothing is done. Contrary to that, on behalf of respondent No.1, it is contended that it has filed I.A.No.12/2024 to hold enquiry against the appellant for perjury. The said contention was not disputed by the appellant's Counsel. Therefore the contention that no action is taken for perjury/forgery also does not sustain.

28. *Prima facie* case means it should not be vexatious one or totally untenable. The materials on record did not show that the case of the appellant was vexatious one, but the rival contentions and the documents produced on either side showed that there is a case to go for trial.

29. In paras 44 and 46 of the judgment in **Socar Turkey's** case referred to *supra*, the Hon'ble Supreme Court held that a privity of contract shall have to be presumed even if the bunkers were not supplied against clear and specific order placed by the Master or the Chief Engineer of the vessel and the plaintiff's door cannot be shut on the principle of lack of privity of contract. It was further held that merely based on the bunker invoice and the delivery receipt, it would be difficult to form conclusive opinion at an interlocutory stage about the privity of contract between the parties and such issue relating to the maritime claim requires to be addressed at the trial of the suit.

30. In this case also, Annexures-G & J bunker confirmation letter and bunker delivery note produced by respondent No.1, more particularly the bunker delivery note Annexure-J bears the seal of the appellant. Thereby *prima facie* case to go for trial is made out. Therefore the learned Single Judge was justified in relying on the judgment in **Socar Turkey's** case referred to *supra*. The distinction tried to be made out by learned Counsel for the appellant in that case on facts, cannot be accepted as no facts of two cases could be

same or similar and what is to be seen is the ratio of the judgment.

31. The appellant did not offer to furnish any security for the maritime claim. If the vessel leaves the territorial waters of the port, respondent No.1 could have been subjected to more hardship and irreparable injury. Therefore those points also tilted in favour of respondent No.1.

32. In this appeal, respondent No.2 contended that having regard to the age and condition of the appellant vessel, retaining the same in their port become an imminent threat to the ecology and the infrastructure of the said port and the vessel may be released on taking security. The appellant and respondent No.1 did not claim that the vessel is unfit and likely to sink/wreck due to such condition. Though respondent No.2 contended that the appellant and respondent No.1 have filed a collusive petition before the learned Single Judge, there is no basis for the same. The learned Single Judge by the impugned order has directed the appellant to bear the cost of maintenance of the vessel. Under such circumstances, at the appellate stage, it is not viable to adjudicate those issues.

33. It is submitted that already before the learned Single Judge an application is filed for appointment of surveyor to value the ship and for sale of the same. Under such circumstances, respondent No.2 can canvass its apprehensions before the learned Single Judge and it would be appropriate for the learned Single Judge to consider the same including the issue of seeking security for the maritime claim, appointment of the valuers etc. That serves the prayer of the appellant in I.A.No.5/2024 filed in this appeal also.

34. Since appeal itself is being disposed of, I.A.Nos.2, 3 and 6 of 2024 being applications for vacating the arrest order and stay of proceedings before the learned Single Judge, do not survive for consideration. In view of the above discussion, we do not find it necessary to refer to the various judgments relied on by learned Counsel for the appellant as they do not advance the appellant's case.

35. Learned Single Judge on judicious appreciation of all the contentions raised by the parties and the material produced before it has passed a well reasoned order. No speck of arbitrariness or perversity is found in the said order. Therefore the following:

**ORDER**

The appeal is dismissed with costs.

Pending IAs stood disposed of in terms of the observations made during the course of the above judgment.

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**

KSR