

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/O.J.APPEAL NO. 3 of 2019****In****R/ADMIRALITY SUIT NO. 53 of 2018****With****CIVIL APPLICATION (FOR ORDERS) NO. 1 of 2019****In****R/O.J.APPEAL NO. 3 of 2019****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE S.R.BRAHMBHATT****and****HONOURABLE MR.JUSTICE VIRESHKUMAR B. MAYANI**

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| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ?  |  |
| 2 | To be referred to the Reporter or not ?   |  |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ?   |  |
| 4 | Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ? |  |

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**P. S. MARINE (A UNIT OF SEAMAN MULTI TRADING PVT. LTD.)**

**Versus****M.V. ALTUS EXERTUS (IMO 7909463)****Appearance:****MR. PRATHMESH KAMAT ADVOCATE WITH MS PAURAMIB****SHETH(841) for the Appellant****for the Opponent No. 2****MR M.C.BHATT SENIOR ADVOCATE WITH MR YN RAVANI(718)****for the Opponent No. 1****CORAM: HONOURABLE MR.JUSTICE S.R.BRAHMBHATT****and****HONOURABLE MR.JUSTICE VIRESHKUMAR B.  
MAYANI**

**Date : 31/01/2020**

**CAV JUDGMENT**

**(PER : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT)**

1. Heard learned counsels appearing for the parties.
2. The present O.J. Appeal has been preferred by the appellant P.S. Marine (A Unit of Seaman Multi Trading Pvt. Ltd.) being aggrieved by the impugned order passed by the learned single Judge dated 18.02.2019 in O.J.C.A. No.1 of 2019 in Admiralty Suit No.53 of 2018, wherein the learned single Judge by dismissing the same as not maintainable in admiralty jurisdiction before the Court, found that the defendant vessel could not be treated as sister vessel of M.V. Altus Uber and the plaintiff has failed to make out *prima facie* case for arrest of the defendant vessel and also found that since defendant vessel was not the sister vessel of M.V. Altus Uber, the arrest of the defendant vessel was not permissible under Section 5(2) of the Admiralty (Jurisdiction and Settlement of maritime Claims) Act 2017 ( the admiralty Act hereafter for sake of brevity) for the claim of the plaintiff against M.V. Altus Uber and consequently, the suit was not maintainable in admiralty jurisdiction of the Court. The learned single Judge also observed that the applicants were entitled to get refund of the amount of Rs.96,73,753/- deposited as security against the claim made in the suit and accordingly directed the registry of this Court to refund the amount of Rs.96,73,753/- to OPES Shipping Ltd., which deposited the said amount as security against the claim of the plaintiff.

3. Facts in brief, as could be culled out from the memo of the suit deserve to be set out as under:

3.1 In or around February, 2018, the plaintiff, appellant herein was approached by MEDS for the supply of provisions and equipment to M.V. Altus Uber, owned by Marine Engineering Diving Services FZC (MEDS for short). On the basis of a promise made by MEDS to pay the price of the supplies, the plaintiff agreed to sell and supply various provisions viz. food items, mineral water, cleaning compounds, ship maintenance supplies, etc. It is stated that there were instances where, in case of emergency, the plaintiff would supply provisions first, without waiting for a formal purchase order. However, MEDS would issue purchase orders later, after the provisions were supplied. The plaintiff states that it would supply provisions only on the basis of faith and assurance of MEDS.

3.2 The said provisions were supplied by the plaintiff to M.V. Altus Uber in various intervals and the same were received by the Master of M.V. Altus Uber without any protest or demur. The Master of M.V. Altus Uber, on receipt of the said provisions requisitioned by MEDS, acknowledge delivery challans issued by the plaintiff.

3.3 In the period between February 2018 to September 2018, the plaintiff raised various invoices on account of the supply of the said provisions to M.V. Altus Uber, at the behest of MEDS. The Invoices were raised in the name of the Master of M.V. Altus Uber, C/o MEDS. On 16<sup>th</sup> August, 2018, MEDS vide its email apologized to the plaintiff for delay in making payment of the sums due under the aforesaid Invoices. MEDS

further, requested the plaintiff to allow time for payment until 10<sup>th</sup> September 2018 and assured that payment is guaranteed and will be done on priority.

3.4 On 8<sup>th</sup> September 2018, the plaintiff in reply to the aforesaid email by MEDS, granted time for payment till 10<sup>th</sup> September 2018. The plaintiff also forwarded an outstanding list of payments, under invoices long overdue from MEDS. The said list specified an outstanding amount of Rs.77,29,299 covered by 24 invoices, with amounts outstanding in full under 23 of them and part payment made under one Invoice No.811.

3.5 On 10<sup>th</sup> September 2018, MEDS vide its email informed the plaintiff that payment, as promised could not be processed due to delay in receivables. Further, MEDS accepted that it was fully responsible for the payment and assured that payment would be made on priority. On 21<sup>st</sup> September 2018, MEDS vide its email informed the plaintiff that it was expecting payment by the first week of October and thereby sought further time to make the payment. MEDS assured the plaintiff that no further request for extension would be sought by it.

3.6 On 23<sup>rd</sup> October 2018, MEDS vide its email, informed the plaintiff that it was making arrangements for payment to be made. MEDS, once again accepted its full responsibility for the payment and assured that it would fulfill its commitments. On 31<sup>st</sup> October, 2018, MEDS vide its email, once again informed the plaintiff that payment could not be made due to non receivables and financial crisis. Further, MEDS requested the plaintiff to grant it some time and

assured that the matter would be resolved soon.

3.7 In the mean time, owing to the repeated reminders and follow ups made by the plaintiff, MEDS finally issued cheques in favour of the plaintiff towards the amounts outstanding under the invoices. On 24<sup>th</sup> October, 2018, the said Cheques came to be deposited by the plaintiff, collectively with the union Bank of India, Mazgaon Branch. However, to the utter shock and surprise of the plaintiff, the said Cheques were dishonored and were returned by the said Bank on 25<sup>th</sup> October 2018, with the remark "Payment stopped by the Drawer" vide Bank memos. The said Cheques along with the respective Bank memos were received by the Plaintiff on 29<sup>th</sup> October 2018.

3.8 The plaintiff states that despite repeated assurances given by MEDS that the issue will be taken up as priority, it failed to make payment of the outstanding sums due under the invoices. Further, it also failed to take any step whatsoever towards resolving the matter. Thereafter, on 27<sup>th</sup> November 2018, the plaintiff issued a notice under Section 138 of the Negotiable Instruments Act, 1881 for dishonor of the said Cheques to MEDS. Thus, the plaintiff states that MEDS was obliged to pay to the plaintiff, the sums due and payable under the invoices, within reasonable time from the receipt of the invoices.

3.9 The plaintiff states that since inception, it has diligently supplied provisions to M.V. Altus Uber and has performed its part of the understanding reached between itself and MEDS. M.V. Altus Uber and MEDS, as its owner received the said provisions without any demur and/or

complaint. Despite the same, there were repeated failures on the part of the MEDS in making payments to the plaintiff. It is stated that despite sufficient time granted by the plaintiff, MEDS failed and neglected to pay to the plaintiff an outstanding sum of Rs.77,29,299 due under the invoices. The supply was of course to the MV Altus Uber and maritime claim was thus arose against the MV Altus Uber only but the same could be enforced by arresting sister vessel of MV Altus Uber under section 5(2) of the Admiralty Act 2017. There was already an arrest order against MV Altus Uber in Mumbai issued by Bombay High Court in Admiralty Suit filed by some claimant. The defendant vessel MV Altus Exertus was sister ship of vessel MV Altus Uber being owned by common owner MEDS and as it was in the water of Bhavnagar port in Gujarat plaintiff filed admiralty suit being admiralty suit no. 53 of 2018 and have the sister vessel MV Altus exertus arrested vide order dated 21.12.2018. As per the respondent and original applicant in OJ CA 1 of 2018 in Admiralty Suit 53 of 2018 MV Altyus Exertus defendant vessel, was brought to India one Altus Sub Sea II As as owner on 4/12/2018. When the admiralty suit was filed by the appellants on 21.12.2018 the defendant vessel was not under any control or power of MEDS, nor was it a sister ship of MV Altus Uber as falsely claimed by the appellants. It was bought by OPES who filed OJ CA 1 of 2019 for vacation the arrest order which came to be allowed bt learned single judge giving rise to the present appeal.

3.10 The Learned Single judge not only vacated the arrest order but also dismissed Admiralty Suit No. 53 of 2018 on 18.02.2019, as stated hereinabove. Being aggrieved by the same, the present Appeal is preferred.

4. Learned counsel appearing for the appellant placed on record written submissions on behalf of the appellant, which are reproduced verbatim as under:”

**“WRITTEN SUBMISSIONS OF ON BEHALF OF THE APPELLANT:**

**1. BRIEF FACTS:**

The facts and circumstances that have led to and/or necessitated the filing of the present suit are set out herein below:

a. The Plaintiff/Appellant was approached by one Marine Engineering Diving Services (“MEDS”) for supply of provisions and equipment to the vessel M.V. Altus Uber owned / bareboat Chartered to MEDS. Accordingly, the Plaintiff/Appellant supplied provisions (as per the Purchase orders, see Ex-“A” to the Plaint) to M.V. Altus Uber in various intervals, at the instance of MEDS. The aforesaid provisions were received by the Master of M.V. Altus uber without any protest or demur. The Master on receipt of the provisions as requisitioned by MEDS, acknowledged the Delivery Challans issued by the Plaintiff/Appellant.

b. Thereafter, pursuant to the various provisions supplied to Altus Uber, at the instance of MEDS, the Plaintiff/Appellant raised various invoices in the name of the Master of M.V. Altus Uber, C/o MEDS. However, despite repeated reminders and follow ups made by the Plaintiff/Appellant and

several promises made by MEDS, MEDS unreasonable delayed, neglected and failed in making the entire payment of a sum of Rs.77,29,299 due under the aforesaid Invoices.

c. The Plaintiff/Appellant filed Admiralty Suit No.53 of 2018 (the "**Suit**") and arrested the Defendant vessel as security for a principal sum of Rs.77,29,299 due under the Invoices, along with an amount of Rs.11,44,454 (being interest @ 20% p.a. on the sum overdue from the date the outstanding amount became due till date), plus legal costs of Rs.8,00,000 along with further interest @ 20% p.a. on the principal sum of Rs.77,29,299 from the date of filing the suit till the date of payment/realization, as per particulars of the claim.

d. The Plaintiff/Appellant had filed the Suit based on two basis:

(i) Altus Uber and Altus Exertus are owned by the same owner i.e. MEDS;

(ii) Alternatively, MEDS is the bareboat Charterer of Altus Uber and Altus Exertus therefore, arrest is maintainable under Section 5(1)(b) of the Admiralty Act.

The Hon'ble Single Judge passed an order directing arrest of the Defendant vessel on 21<sup>st</sup> December 2018.

e. Thereafter an OJCA No. 1 of 2019 (the



**“OJCA”**), was filed by one Opes Shpping Ltd. (**“Opes Shpping”**) being the alleged cash buyer of the Defendant vessel for vacating the arrest order dated 21<sup>st</sup> December 2018. The Plaintiff/Appellant filed its Affidavit in Reply to the same ;and also tendered written submissions.

f. Thereafter, by its order dated 18<sup>th</sup> February 2019 (the **“impugned Order”**), the Ld. Single Judge dismissed the Suit and allowed the OJCA filed by the Rspondent. Further, the Ld. Single Judge ordered the return of security furnished by Opes Shipping.

g. Hence the present appeal, being O.J. Appeal No.1 of 2019 (the **“present Appeal”**).

## **2. POINTS FOR CONSIDERATION:**

The Appeal raises the following important question on law:

1. Whether for a claim against a bareboat charterer, can another vessel on bareboat charter to the same charterer (against whom there is a maritime claim), be arrested?

2. Whether under the Admiralty Act 2017, a sister ship arrest is only restricted to 2 vessels owned by the same owner under Section 5(1) (a) read with Section 5(2) of the Admiralty Act 2017 or whether the arrest of 2 vessels under the common bareboat Charter is also permissible under Section 5(1)(b) read with

Section 5(2) of the Admiralty Act?

3. Whether the Judgment of the Supreme Court in **Sunil B. Nail v. geowave Commander** which was a pre-Admiralty Act 2017, will apply to a Suit to which Admiralty Act 2017 applies?

4. Whether the Ld. Single Judge's failure to consider the case under Section 5(1)(b) read with Section 5(2) of the Admiralty Act 2017, should render the impugned order bad?

5. Whether or not the sister vessel (Altus Exertus) can be arrested for a claim against Altus Uber?

**2.1 Whether for a claim against a bareboat charterer, can another vessel be arrested which is on bareboat charter to the same charterer against whom there is a maritime claim?**

**2.2 Whether under the Admiralty Act 2017, a sister ship arrest is only restricted to 2 vessels owned by the same owner under Section 5(1)(a) read with Section 5(2) of the Admiralty Act 2017 or whether the arrest of 2 vessels under the common bareboat Charter is also permissible under Section 5(1)(b) read with Section 5(2) of the Admiralty Act, 2017?**

**AND**

The Plaintiff/Appellant had pleaded that even considering MEDS to be merely a bareboat charterer, the Plaintiff/Appellant is entitled to enforce its claim against the Defendant vessel. However, the Ld. Single Judge failed to consider this alternative argument pleaded by the Plaintiff.

MEDS was the Bareboat charterer of Defendant vessel, at the time of arrest

The Plaintiff based on the web-site of MEDS was under the impression that MEDS is the owner of the Defendant vessel (see paras 2, 3(n) and 4 to 7 of the Plaint). However, in the alternative at para 8 of the Plaint, the Plaintiff / Appellant has pleaded that if MEDS is the bareboat Charterer of the Defendant vessel under Section 5(1)(b) of the Admiralty Act 2017.

It is trite law that a party is allowed to plead alternative case in lieu of the main pleaded case. Therefore, assuming a Plaintiff is unable to substantiate its case on the main case, it is still entitled to a decree on the alternative case. The Supreme has held in the following Judgments that a Plaintiff is entitled to plead an alternative case even if the same is inconsistent with the earlier case.

Judgments: 5

1. Srinivas Ram Kumar v. Mahabir Prasad & Ors. - AIR 1951 SC 177 (at para 9) which

reads as under:

“It is true that it was no part of the plaintiff's case as made in the plaint that the sum of Rs.30,000 was advanced by way of loan to the defendants second party. But it was certainly open to the plaintiff to made an alternative case to that effect and make a prayer in the alternative for a decree for money even if the allegations of the money being paid in pursuance of a contract of sale could not be established by evidence. The fact that such a prayer would have been inconsistent with the other prayer is not really material. A plaintiff may rely upon different rights alternatively and there is nothing in the Civil Procedure Code to prevent a party from making two or more inconsistent sets of allegations and claiming relief thereunder in the alternative. The question, however, arises whether, in the absence of any such alternative case in the plaint it is open to the court to give him relief on that basis. The rule undoubtedly is that the court cannot grant relief to the plaintiff on a case for which there was no foundation in the pleadings and which the other side was not called upon or had an opportunity to meet. But when the alternative case, which the plaintiff could have made, was

not only admitted by the defendant in his written statement but was expressly put forward as an answer to the claim which the plaintiff made in the suit, there would be nothing improper in giving the plaintiff a decree upon the case which the defendant himself makes. A demand of the plaintiff based on the defendant's own plea cannot possibly be regarded with surprise by the latter and no question of adducing evidence on these facts would arise when they were expressly admitted by the defendant in his pleadings. In such circumstances, when no injustice can possibly result to the defendant, it may not be proper to drive the plaintiff to a separate suit. As an illustration of this principle, reference may be made to the pronouncement of the Judicial Committee in Babu Raja Mohan Manucha v. Babu Manzoor. This appeal arose out of a suit commenced by the plaintiff appellant to enforce a mortgage security. The plea of the defendant was that the mortgage was void. This plea was given effect to by both the lower courts as well as by the Privy Council. But the Privy Council held that it was open in such circumstances to the plaintiff to repudiate the transaction altogether and claim a relief Contract Act. Although no such alternative claim was made in the plaint,

the Privy Council allowed it to be advanced and gave a decree on the ground that the respondent could not be prejudiced by such a claim at all and the matter ought not to be left to a separate suit. It may be noted that this relief was allowed to the appellant even though the appeal was heard *ex parte* in the absence of the respondent.”

2. L.S. Ashwathama & Anr. V.P. Prakash (2009) 13 SCC 229 (Para 17 and 18) which reads as under:

“17. The legal position is no doubt well settled. To establish a claim of title by prescription, that is adverse possession for 12 years or more, the possession of the claimant must be physical/actual, exclusive, open, uninterrupted, notorious and hostile to the true owner for a period of exceeding twelve years.

It is also well settled that long and continuous possession by itself would not constitute adverse possession if it was either permissive possession or possession without *animus possidendi*. The pleas based on title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced. Unless the person possessing the property has the requisite *animus* to possess the property

hostile to the title of the true owner, the period for prescription will not commence. (Vide : Periasami vs. Jagdish Kalita - 2004(1)SCC 271 and P.T. Munichikkanna Reddy vs. Revamma - 2007 (6) SCC 59).

18. We are however of the view that the decision in Mohan Lal (supra) relied on by the plaintiffs is inapplicable, as the defendant therein had pleaded that he was in possession, having obtained possession in part performance of a sale agreement. As the defendant therein admitted that he came into possession lawfully under an agreement of sale and continued to remain in such possession, there was no adverse possession. This case is different, as the defendant did not contend that he entered possession under or through the plaintiffs. His case was that he was in possession as a tenant under Gowramma from 1962 and he became the owner by purchasing the plot from Gowramma in 1985. He alternatively contended that if Gowramma did not have title and consequently his claim based on title was rejected, then having regard to the fact that he had been in possession by setting up title in Gowramma and later in himself, his possession was hostile to the true owner; and if he was able to

make out such hostile possession continued for more than 12 years, he could claim to have perfected his title by adverse possession. There is considerable force in the contention of defendant provided he is able to establish adverse possession for more than 12 years. When a person is in possession asserting to be the owner, even if he fails to establish his title, his possession would still be adverse to the true owner. Therefore, the two pleas put forth by the defendant in this case are not inconsistent pleas but alternative pleas available on the same facts. Therefore, the contention of the plaintiffs that the pleas of adverse possession is not available to defendant is rejected.”

Therefore, even proceeding on the basis that MEDS was merely a bareboat Charterer for the Defendant vessel as well as for Altus Uber (See Para 4.1 Page 4 and Annexure-F at Page 60 of the OJCA), the arrest of the Defendant vessel is still maintainable. Respondent No.1 in the OJCA, claimed that the Defendant vessel was bareboat chartered to MEDS by its alleged owner, pursuant to a bareboat charterparty dated 30<sup>th</sup> November 2014 (“**bareboat charterparty**”). Respondent No.1 further claimed that MEDS acted as the bareboat charterer of Altus Uber. The Plaintiff/Appellant



is also aware of the orders passed by the Bombay High Court, wherein MEDS claims to be the bareboat charterer of Altus Uber.

The Plaintiff/Appellant's argument proceeds on the following basis: 7

i. Section 5(2) of the Admiralty Act, 2017 provides for the arrest of any other vessel in lieu of the vessel against which a maritime claim has arisen. Section 5(2) reads as under:

“The High Court may also order arrest of any other vessel for the purpose of providing security against a maritime claim, in lieu of the vessel against which a maritime claim has been made under this act subject to the provisions of sub-section (1)”

a) Thus, Section 5(2) contemplates arrest of a vessel other than the vessel which is the offending vessel. The words *“any other vessel”* read with *“in lieu of the vessel against which a maritime claim has been made...”*. In the facts of the present case, the offending vessel is Altus Uber and the Appellant has in lieu of the same has arrested the present vessel Altus Exertus;

b) The fact that Section 5(2) reads as *“...subject to the provisions of sub-section (1)”*, clearly means that Section 5(2) cannot be read in isolation but has to be read in conjunction with provisions of Section 5(1). Section 5(1) contemplates various situations;

c) The impugned order restricts the same the applicability to Section 5(1)(a) which contemplates arrest of a vessel for a claim against another vessel if the claim is against an entity who owns both the vessels. However, Section 5(2) does not contemplate applicability of Section 5(1)(a). To interpret Section 5(2) only to Section 5(1) (a) would be to do violence to the plain and unambiguous language of Section 5.

d) In the present case, Section 5(2) will have to be read with Section 5(1)(b) as follows:

“The High Court may order arrest of any vessel which is within its jurisdiction for the purpose of providing security against a maritime claim which is the subject of an admiralty proceeding where the court has reason to believe that-

(a)...

(b) **the demise charterer of the vessel** at the time when the maritime claim arose is liable for the claim **and is the demise charterer** or the owner **of the vessel when the arrest is effected;**

(c).....”

Section 5(1)(b) read with Section 5(2) clearly contemplates that if there is a claim against a demise charterer of a vessel when the maritime claim arose makes it permissible to arrest another vessel which is bareboat

chartered to the same charterer.

e) MEDS was the Demise/Bareboat charterer of Altus Uber when the claim arose and was the Demise/Bareboat charterer of the Defendant vessel at the time of her arrest. Thus, it is clear that the Plaintiff/Appellant was entitled to arrest the Defendant vessel for unpaid provisions supplied to Altus Uber at the behest of MEDS. Even assuming that MEDS was merely the bareboat charterer of the Defendant vessel as well as of Altus Uber, the same will not alter the position with respect to the arrest of the Defendant vessel. The Plaintiff/Appellant is therefore entitled to arrest the Defendant vessel, despite MEDS being the demise/bareboat charterer of the vessels by Respondent No.1's own admission.

f) Interestingly, the Ld. Single Judge agrees with the interpretation of Section 5(1)(b) to hold that arrest is maintainable under Section 5(1)(b) as there is no difference between bareboat charterer and demise Charterer (See para 37 of the impugned order). The relevant portion of the impugned order reads as under:

“The terms contained in above clause fully satisfy the characteristics of the demise charter. However, it is described as Bareboat charter, as it is another name of demise charter. Therefore, the contention that there is another name of demise charter cannot be accepted. Since, there is no difference between

Bareboat charter and demise charter, the contention that arrest of the vessel under section 5(1)(b) is not permissible for the liability of the Bareboat charterer can also not be accepted.”

In light of the aforesaid, it is evident that the Ld. Single Judge refused to accept the interpretation of the Respondent (i.e. Original Defendants) that for a liability of a Bareboat Charterer, a vessel cannot be arrested if the same was on bareboat charter to the same charterer. Thus, the Ld. Single Judge accepted the Submissions/interpretation of Section 5(1) (b) propounded the Appellant / Plaintiff. However, the Ld. Single erred in applying the interpretation to the facts of the present case being the alternative argument pleaded by the Plaintiff/Appellant.

More specifically, the Ld. Single Judge in the impugned Order erred in failing to appreciate the following:

i i The Ld. Single Judge reached a categorical finding that there being no difference between demise charter and bareboat charter, arrest is permissible under Section 5(1)(b) of the Admiralty Act, 2017. Despite the same, the Ld. Single Judge erred in vacating the arrest order dated 21<sup>st</sup> December 2018, even though by Respondent No.1's own admission MEDS was the bareboat charterer of both the Defendant vessel and Altus Uber;

ii The Ld. Single Judge failed to consider the judgment passed by the Hon'ble Bombay High Court in the case of Siem Offshore Redri AS v. Altus Uber.

**Siem Offshore Redri v. Altus Uber, (2018 SCC Online Bom 2730)**

While explaining the application of the provisions contained in Section 5 of the Admiralty Act, 2017, the Hon'ble Court observed as follows:

*“Section 5(2) provides for arrest of any other vessel in lieu of the vessel against which a maritime claim has been made. This means that two different vessels need to be involved to satisfy the requirement of S. 5(2) Viz.,*

- a. *“The vessel” with respect to which the dispute originally arose – the contract vessel or offending vessel;*
- b. *“any other vessel” to be arrested to secure the claims in respect of “the vessel” - the securing vessel.*

*Note: “Securing Vessel” cannot be the “Contract vessel/offending vessel”. They are different vessels.*

*Since Section 5(2) is subject to the provisions of subsection (1), the relevant provisions pertaining to a claim against a demise charterer are contained in subsection 5(1)(b) which provides as follows:*

*“the demise charterer of the vessel at the time when the maritime claim arose is liable for the claim and is the demise charterer or the owner of the vessel when the arrest is effected.”*

*For 5(1)(b) to respond to 5(2), we must identify the contract vessel/offending vessel and the securing vessel which is being arrested as follows:*

*a. “The Vessel” (contract vessel/offending vessel) of which the demise charterer is MEDS at the time when the maritime claim arose and is liable for the claim.*

*“any other vessel” (securing vessel) of which MEDS is the demise charterer or the owner when the arrest is effected.”*

In fact, the judgment of the Bombay High Court in *Altus Uber* is squarely applicable to the facts of the present case. In fact, the Hon'ble Bombay High Court considers the Judgment of the Supreme Court in *Sunil B.Naik v. Geowave Commander*. The Judgment of the Ld. Single Judge of the Hon'ble Bombay High Court is now upheld by the Division Bench of the Hon'ble Bombay High Court in *Altus Uber v. Siem Offshore Rederi AS* (Commercial Appeal (L) No.465 of 2018) order dated 23<sup>rd</sup> July 2019.

i.      iii *Altus Uber v. Siem Offshore Rederi AS* (Commercial Appeal (L) No.465 of 2018) the

Division Bench held:

“120 We find much substance in the contentions of Mr. Pratap that at this stage the Court was not concerned with the authenticity and genuineness of the documents. At best, this is a word against work. Mr. Pratap is right in urging that the plaintiff cannot be non-suited by relying on such questionable documents. The plaintiffs have then stated that Altus Uber can still be arrested because the plaintiffs have a maritime claim against the demise charter MEDS in respect of their vessel Siem Marlin and MEDS is the demise charterer of the vessel Altus Uber on the date of the arrest. The plaintiffs have pointed out that the demise charterer can change the name of the ship, its flag, Port of registry and classification society and even represent to the India Register of Shipping to be the owner of the ship as appearing from the documents on record. All this was permitted by the registered owner Swordfish assuming that the documents produced by Swordfish are genuine and authentic. According to Mr. Pratap, still, Altus Uber can be arrested. Mr. Pratap says that in the event clause (a) of sub-section (1) of section 5 does not help the plaintiff, clause (b) comes to its aid and assistance. Therefore, any vessel which is in the jurisdiction of this Court can be arrested by this Court where there is reason to believe that a demise charterer of the vessel at the time when the maritime claim

arose is liable for the claim and is the demise charterer or the owner of the vessel when the arrest is effected. Thus, MEDS is liable for the maritime claim of the plaintiff. The MEDS, at the time when the claim arose, is the demise charterer when the arrest of the vessel is effected. To our mind, sub-sections (1)(2) of section 5 enable this Court to order arrest of any other vessel for the purpose of providing security against a maritime claim in lieu of the vessel against which a maritime claim has been made under the Admiralty Act. However, that any vessel can also be arrested for the purpose set out in sub-section (1) where this Court has reason to believe that it was on demise charter and its demise charterer was liable for the maritime claim when it arose and is the demise charterer of the said Altus Uber when the arrest is effected.

122 We have carefully perused the order of the learned single Judge and we find that the learned Judge, in paragraph 52 has observed that the plaintiff gave their vessel Siem Marlin on bareboat charter to MEDS under a bareboat charter party dated 13<sup>th</sup> May, 2015. Thus, MEDS was the demise charterer of the plaintiff's vessel. The plaintiff has various claims in respect of breach of this charterparty. They are maritime claims under section 4 of the Act. The learned Judge then rightly refers to sub-section (2) of section 5 read with section 5(1)(b) to hold that the



plaintiff is entitled to arrest a vessel which is either owned by or on demise charter to MEDS when the arrest is effected. The learned Judge says that the plaintiff has referred to MEDS as owner of the defendant vessel Altus Uber and in support of this assertion, it relies upon the documents, namely, Seaweb Report that shows MEDS as the registered owner, IR Classification documents where the Classification Society IRS confirms that the registered owner of the vessel is MEDS and the former name of the vessel was Swordfish and the vessel Port of vessel is Monrovia and flag is Liberia. Then, the documents from the website of MEDS have also been referred by the learned single Judge. The learned single Judge says that there is a failure of MEDS to disclose the alleged bareboat charterparty under which it claims to be a demise charterer. Therefore, that assertion cannot be accepted according to the learned single Judge. That is sufficient to prima facie demonstrate that MEDS is the owner of the defendant vessel. The learned single judge has also referred to the denial of MEDS that they are not owners, but are demise charterers of the vessel. The learned Judge rightly says that this makes no difference to the arrest of the defendant vessel. The learned single Judge has also rightly made the distinction between “the vessel” and any

**2.3. Whether the Judgment of the Supreme Court in Sunil B.Naik v. Geowave**

**Commander which was a pre-Admiralty Act 2017, will apply to a Suit to which Admiralty Act 2017 applies?**

i. **2.4 Whether the Id. Single Judge's failure to consider the case under Section 5(1)(b) readoi with Section 5(2) of the Admiralty Act, 2017 should render the impugned order bad?**

ii. Other vessel". Finally, the learned single Judge holds that assuming MEDS to be the demise charterers of Altus Uber as contended by MEDS and Swordfish, still, applying the provisions of section 5(2) read with section 5(1)(b) of the Admiralty Act, the defendant vessel is liable to be arrested for the purpose of providing security in respect of the maritime claim of the plaintiff for which MEDS is liable as demise charterer of the defendant vessel. This observation is criticized but what is material for us to note is that if the plea of ownership of Altus Uber fails, still, MEDS claims that it is the demise charterer of Altus Uber."

Thus, MEDS being the bareboat/demise charterer of the Defendant vessel as well as Altus Uber, (as contended by Respondent No.1 itself) and not the owner, yet applying the provisions of Section 5(2) read with Section 5(1)(b) of the Admiralty Act, 2017, the Defendant vessel (securing vessel) is liable to be arrested for the purpose of providing security in respect of the Plaintiff/Appellant's

maritime claim for which MEDS is liable as the demise charterer of Altus Uber (offending vessel).

**AND**

The said Judgment is clearly not applicable in the facts of the present case for the following reasons:

(i) Geowave Commander's case was a case where the person liable was a time charterer and the Plaintiff sought to arrest another vessel (which was Geowave Commander) which was demise chartered to the time charterer. Neither the 1999 Arrest convention nor does the Admiralty Act 2017 contemplates such an arrest. Such a question does not arise in the facts of the present case. In the facts of the present case,

i the Plaintiff's/Appellant's case arises is in respect of a claim against a demise charterer and the vessel sought to be arrested is owned / demise chartered to the same demise charterer;

ii (ii) The differential facts is clearly evident from the reading of the Judgment more particularly in para 64 of the said Judgment. It is makes clear that in the facts of the SC Judgment, the maritime claim arose against the Plaintiff's own vessel and not against the Defendant's vessel. That was a case where Plaintiff had given its vessel on time Charterer to Reflect who failed to pay the Charter hire,

for recovery of Charter Hire, the Plaintiff arrested a vessel which was given on Bareboat Charter. The Supreme Court came to a conclusion that the maritime claim arose against the Plaintiff's vessel and not the Defendant vessel. The said decision cannot be applied exactly in the facts of the present case as, the Plaintiff does not own any vessel but had supplied provisions to Altus Uber at the instance of MEDS. Thus, there is no occasion for a maritime claim to arise against Plaintiff's vessel as there is none. Therefore, the said Judgment is inapplicable on facts.

iii (iii) It is settled law that a Judgment of the Supreme Court is a binding precedent for what it decides in the facts of the case before him. The Supreme Court has observed that every observation of the Judge made during the Judgment does not become a binding precedent.

**Judgment:**

(i) State of Orissa v. Md. Illiyas – (2206) 1 SCC 275 (para 12) which reads as under:

*“When the allegation is of cheating or deceiving, whether the alleged act is willful or not depends upon the circumstances of the concerned case and there cannot be any strait jacket formula. The High Court unfortunately did not discuss the factual aspect and by*

*merely placing reliance on earlier decision of the Court held that pre-requisite conditions were absent. Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on*

*which a question before a Court has been decided is alone binding as a precedent. (See: State of Orissa v. Sudhansu Sekhar Misra and Ors. (AIR 1968 SC 647) and Union of India and Ors. v. Dhanwanti Devi and Ors. (1996 (6) SCC 44). A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in Act of Parliament. In Quinn v. Leathem (1901) AC 495 (H.L.), Earl of Halsbury LC observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides.”*

Thus, the Supreme Court was not deciding a case where the Plaintiff was supplying provisions to the bareboat charterer but was a case where Plaintiff had offered its vessel on time charterer. The Supreme Court therefore, held that maritime claim is not against the bareboat chartered vessel but against the Plaintiff's own vessel.

Also, the Supreme Court has in the facts of the

case had no occasion to consider Section 5(2) to be read with Section 5(1) of the Admiralty Act 2017. Since, Section 5(2) was not considered the said authority cannot be considered as a binding precedent on facts where Section 5(1)(b) is to be read with Section 5(2) of the Act.

i. (iv) Even the Hon'ble Bombay High Court in the case of Altus Uber also had an occasion to consider the Judgment of the Hon'ble Supreme Court in Geowave Commander and has held as follows:

*“vi) Sunil B.Naik v. Geowave Commander:*

*Although a copy was tendered, this Judgment was not pressed by the Applicant. It is clearly not relevant. In this case, Plaintiff had a maritime claim arising out of a time charter of his own ship to the time charterer. The person liable was the time charterer. Plaintiff sought to arrest was another vessel which was demise chartered to the time charterer, i.e. a vessel on demise charter to the time charterer. Netiher the 1999 arrest convention nor the Admiralty Act, 2017 permits such an arrest. This question also does not arrest in the facts of the present case where the Plaintiff's claim arises out of a demise charter and the person liable is the demise charterer and the vessel*

*arrested is owned by and/or demise chartered to the same demise charterer.”*

i (v) The Division Bench of the Hon'ble Bombay High Court has upheld the Judgment of the Ld. Single Judge and has also independently held that the Judgment of the Supreme Court in *Geowave Commander* (Supra) is not applicable after the coming in force of the Admiralty Act 2017. The Division Bench held as follows:

“134 Now, the only judgment that requires a reference is a judgment cited by Mr. Chinoy in the case of *Sunil B.Naik Vs. Geowave Command* (2018) 5 SCC 505

135 There, the facts were peculiar. There, Oil & Natural Gas Corporation awarded contract to one Reflect Geophysical Pte. Ltd. (for short “RG”). This contract was awarded for carrying out certain operations for ONGC. In order to carry out these obligations, RG in turn entered into a charterparty agreement vide contract dated 29<sup>th</sup> June, 2012, to charter the vessel *Geowave Commander* for a period of three years. The registered owner of *Geowave Commander* was Master and Commander A S Norway. The vessel is stated to be specialized ship equipped to carry out seismic survey operations. In the terms of the contract this was a bareboat charter. There was an option to purchase the vessel.

136 All the terms and conditions of the



charterparty were, therefore, referred and what is material for us is that RG entered into a charterhire agreement on 30<sup>th</sup> October, 2012 with M/s. Sunil B.Naik the appellant before the Hon'ble Supreme Court in terms whereof Sunil Naik agreed to supply twenty four fishing trawlers being the chase vessels to assist in survey operations to be conducted by Geowave Commander. The charter was for sixteen chase vehicles out of twenty four fishing trawlers initially. There was an arbitration clause therein. Sunil Naik contended that sixteen vessels were made ready for RG to ensure that fishing vehicles were kept well clear of the towed in water seismic equipment so that their fishing equipment is not damaged. The daily hiring agreement varied. There was another appellant before the Court, but we are not concerned with it because Sunil Naik issued a demand notice to RG for payment of outstanding dues and another party Yusuf Abdul Gani moved the Bombay High Court by filing a suit against Geowave as an Admiralty Suit and obtained an order of arrest of the vessel. Sunil Naik also filed an Admiralty suit and obtained an order of arrest.

137 The owner of the vessel Master and Commander A S Norway filed Notice of Motion in the two proceedings for vacation of the ex parte order of arrest and that order was vacated and the order of the learned single Judge vacating the arrest was unsuccessfully

challenged before a Division Bench of this Court which proceeded to dismiss the Appeals. That is how the two appeals before the Hon'ble Supreme Court.

138 It is in that context that the observations very heavily relied upon by Mr. Chinoy are made. However, in paragraph 14, the Hon'ble Supreme Court has held that a demise charterer like RG who is the owner for services stipulated, assumes in large measure the customary rights and liabilities of vessel owners in relation to third persons, who have dealt with him or with the ship, illustratively, repairs and supplies ordered for the vessel, wages of seamen, etc. It is in that context that the appeal of Sunil Naik was dismissed. It is clear that on the date when the matter was considered by this Court, the Admiralty Act had not been brought in to effect. We are, therefore, of the clear opinion that the Motion of the owner of Geowave Commander was allowed, but in distinct factual circumstances. Therefore, the observations made in this judgment and particularly highlighted, namely, paragraphs 29, 30, 36 to 38 and 41 ought to be viewed in the peculiar factual backdrop. Sunil B. Naik's case is, therefore, clearly distinguishable. We cannot, unmindful of the language of the Admiralty Act, 2017 and the factual conspectus before us, apply these observations. Therefore, our conclusion is that this decision is distinguishable on facts and

also because that when it was delivered the legal scenario was different. The Hon'ble Supreme Court itself noted that the Conventions held that though the draft of the Admiralty Act, 2017 was in place, the Admiralty Act, 2017 received the assent of President of India on 9<sup>th</sup> August, 2017 and was duly published in the Gazette on the said date, but the date of its coming into force was not notified. In fact, the Hon'ble Supreme Court says that the dispute before it is a reminder to the Government to bring into force the Act. 139 The scenario has undergone a change after the Act is indeed brought into effect and the learned single Judge has decided the issue at hand applying the provisions of the Admiralty Act, 2017.”

(vi) Thus, the Judgment of the Supreme Court in facts of the present case is clearly not applicable. Apart from facts, the Judgment of Supreme Court in *Geowave Commander* (Supra) is clearly not applicable even on law. The same is evident on law: a. The judgment in *Geowave Commander* was pronounced on the basis of interpretation of the provisions of Article 3 of the 1999 Arrest Convention, before the coming into force of the Admiralty Act, 2017. However, the present case is governed by the provisions of Admiralty Act, 2017. This itself is a ground for non-applicability of the judgment in *Geowave Commander* to the facts of the present case, owing to the substantial

differences between the provisions of Article 3 of the 1999 Arrest Convention and Section 5 of the Admiralty Act, 2017. b. The differences between Article 3 of the Arrest Convention and Section 5 of the Admiralty Act, 2017 can be laid down as below:

- Article 3(1) of the Arrest Convention in comparison with Section 5(1) of the Admiralty Act, 2017-

*“Article 3: Exercise of right of arrest*

***1. Arrest is permissible of any ship in respect of which a maritime claim is asserted if:***

*(a) the person who owned the ship at the time when the maritime claim arose is liable for the claim and is owner of the ship when the arrest is effected; or*

*(b) the demise charterer of the ship at the time when the maritime claim arose is liable for the claim and is demise charterer or owner of the ship when the arrest is effected; or...”*

Thus, it is evident that Article 3(1) of the Arrest Convention permitted the arrest of the vessel only with respect of which a maritime claim arose. This is different from Section 5(1) of the Admiralty Act, 2017 that permits the arrest of any vessel and reads as follows:

*“ The High Court may order arrest of any vessel which is within its*

*jurisdiction for the purpose of providing security against a maritime claim which is the subject of an admiralty proceeding where the court has reason to believe that-*

*a) The person who owned the vessel at the time when the maritime claim arose is liable for the claim and is the owner of the vessel when the arrest is effected;*

*b) the demise charterer of the vessel at the time when the maritime claim arose is liable for the claim and is the demise charterer or the owner of the vessel when the arrest is effected;*

*c) ...”*

The opening words of the two provisions are materially different. An arrest under Article 3(1) is possible only if a maritime claim arises “in respect of “ a vessel which is sought to be arrested. This means that the claim has to be with respect to the offending vessel only and not a claim against any other vessel.

Under Section 5(1) there are no words such “in respect of which”. This means that a maritime claim need not necessarily arise against the offending vessel. In fact, Section 5(1) is much wider it contemplates “arrest of any vessel” where the “court has reason to believe” (a) the maritime claim is against the owner of the vessel sought to be arrested; (b) claim is

against the demise charterer who is either the owner or the demise charterer when the arrest is effected. Clause (c) onwards is not applicable in the facts of the present case.

- Article 3(2) of the Arrest Convention in comparison with Section 5(2) of the Admiralty Act, 2017-

*“Article 3(2). Arrest is also permissible of any other ship or ships which, when the arrest is effected, is or are owned by the person who is liable for the maritime claim and who was, when the claim arose:*

*(a) owner of the ship in respect of which the maritime claim arose; or*

*(b) demise charterer, time charterer or voyage charterer of that ship.*

*This provision does not apply to claims in respect of ownership or possession of a ship.”*

Under Article 3(2) arrest is possible of any vessel which is the sister vessel of the offending vessel or is the vessel which is “owned by” the demise, voyage or time charterer of the offending vessel at the time when the maritime claim arose.

Now this totally different from Section of the Admiralty Act 2017. Section 5(2) is different from Article 3(2) of the 1999 Arrest convention. Section 5(2) reads as follows:

“The High Court may also order arrest of any other vessel for the purpose of providing security against a maritime claim, in lieu of the vessel against which a maritime claim has been made under this act subject to the provisions of sub-section (1)”

Thus, Section 5(2) is clearly subject to Section 5(1). However, Article 3(2) is independent of Article 3(1).

Article 5(2) unlike Article 3(2) permits arrest of any other vessel “in lieu of” the offending vessel subject to Section 5(1). No such provision existed under the 1999 Arrest Convention.

One more stark difference in the Act and the convention is that unlike Article 3(2) of the 1999 Arrest convention, the Admiralty Act does not contemplate the vessel being on time and voyage charter. Thus, the said Judgment is not applicable.

Importantly, the Ld. Single Judge (whose order is impugned in the present Appeal) has considered the SC Judgment in Sunil B.Naik v. Geowave Commander (supra) but still has held that arrest under Section 5(1)(b) of the 2017 Act is permissible. This finding is not

• **2.5 Whether or not the sister vessel (Altus Exertus) can be arrested for a claim against Altus Uber?**

Challenged by the Respondent. Thus, it is clear

that Surpeme Court Judgment in Sunil B. Naik's case is not applicable to the facts of the present case.

I (i) The Respondent has submitted that the vessel Altus Exertus cannot be arrested for a claim against Altus Uber. However, the submission of the Respondent that Altus Exertus cannot be arrested for a claim against Altus Uber was not argued and/or decided by the Ld. Single Judge. In any event, the said Submission is without merit;

i. (ii) The respondent has wrongly contended that Altus Uber is present and available for arrest. This is belied by the Order of the Hon'ble Bombay High Court dated 8<sup>th</sup> March, 2019, in Commercial Admiralty Suit No. 62 of 2019. Therefore, today, Altus Uber is not available for the Appellant to be arrested;

i (iii) Section 5(2) contemplates an option with a creditor to arrest either the offending vessel of a sister-vessel. There is no embargo contemplates under the Admiralty Act which prohibits a Court from arresting a sister-vessel when the offending vessel is available. Such an embargo in absence of a specific provision cannot be implied. It is settled law that a prohibition under a statute on the powers of the Court has to be specific and cannot be implied.

i (iv) Shipping Corporation of India Ltd V. the Master of M.V. Giurgeni – 1997 (2) GLR



1745 has no application to the facts of the present case.

i That was a case prior to the Admiralty Act, 2017 and even before the Supreme Court recognized the applicability of the 1999 Geneva Convention on arrest of Ships (in Liverpool and London P & I Club v. M.V. Sea Success). This Court held that Merchant Shipping Act is not the sole repository for the powers of arrest. This Judgment has no application to the facts of the present case. This is in fact clear from reading para-14 of the Judgment which says

“Looking to the say of the Supreme Court in M.V. Elisabeth, it is clear to me that, in absence of specific statutory provisions in the India Statute the Court can fill up the lacunae and while doing so the regard could be had to the Brussels Conventions and known Principles of International law under Statutes or Common Law”

i (v) The Judgment of the Hon'ble Bombay High Court in Siva Bulk Ltd. v. M.V. Aoadabao & Anr. Has no application to the facts of the present case as that was a matter where the Hon'ble Bombay High Court was dealing with a situation where post vacating the order of arrest whether a Suit is maintainable. This issue is not in the present case as the present case. The present Appeal is a First Appeal challenging the dismissal of the Suit. This

Court is Appeal is not deciding whether a Suit is maintainable post vacating the arrest. Therefore, the Judgment has no Application to facts of the present case.”

5. Learned counsel for the appellant has also produced list of dates, which are reproduced verbatim as under:

**“LIST OF DATES**

| <b>Sr. No.</b> | <b>Date</b>                    | <b>Event</b>  | <b>Pages/Exhibits</b>                                    |
|----------------|--------------------------------|---|--|
| 1              | Around February 2018           | The Appellant / Plaintiff was approached by one Marine Engineering Diving Services FZC (“ <b>BMEDS</b> ”) for supply of provisions to a vessel, Altus Uber. On the basis of promise made by MEDS to pay for the supplies, the Appellant / Plaintiff agreed to sell and supply various provisions viz. food items, mineral water, cleaning compounds, ship maintenance supplies, etc (“ <b>the said provisions</b> ”) to Altus Uber. Accordingly, various Purchase Orders were issued by MEDS. | Exhibit-A of the Plaint, Pg. Nos. 1 to 42 of the Plaint. |
| 2              | February 2018 – September 2018 | The said provisions supplied by the Appellant / Plaintiff to Altus Uber were received by the Master of Altus Uber without any protest or demur. On receipt of the said provisions, the Delivery Challans issued by the Plaintiff would be acknowledged by the Master of M.V. Altus Uber or by MEDS itself.  | Exhibit-B of the Plaint, Pg. Nos.43 to 87 of the Plaint  |
| 3              | February                       | The plaintiff raised various  | Exhibit-C of the   |

|   |                                       |   |  |
|---|---------------------------------------|---|--|
|   | <i>2018 – September 2018</i>          | <i>invoices on account of the supply of the said provisions of MEDS. The Invoices were raised in the name of the Master of Altus Uber, C/o MEDS.</i>  | <i>Plaint, Pg. Nos.88 to 133 of the Plaint</i>                   |
| 4 | <i>16<sup>th</sup> August 2018</i>    | <i>MEDS by its email addressed to the Plaintiff/Appellant apologized for the delay in making payment of the sums due under the Invoices and requested the Plaintiff to allow time for payment until 10<sup>th</sup> September 2018.</i>   |  |
| 5 | <i>8<sup>th</sup> September 2018</i>  | <i>The Plaintiff / Appellant by its email addressed to MEDS, granted time for payment until 10<sup>th</sup> September 2018. The Appellant / Plaintiff also forwarded and outstanding list of payments, under invoices long overdue from MEDS. The list specified an outstanding of Rs.77,29,299 covered by 24 invoices.</i> | <i>Exhibit-D of the Plaint, Pg. Nos.134 to 136 of the Plaint</i> |
| 6 | <i>10<sup>th</sup> September 2018</i> | <i>MEDS by its email informed the Appellant / Plaintiff that it was expecting payment only by first week of October and sought further time to make payment.</i>  |  |
| 7 | <i>21<sup>st</sup> September 2018</i> | <i>MEDS by its email informed the Appellant / Plaintiff that it was expecting payment only by first week of October and sought further time to make payment.</i>  |  |
| 8 | <i>23<sup>rd</sup> October 2018</i>   | <i>MEDS by its email informed the Appellant / Plaintiff that it was making arrangements for payment to be made. MEDS accepted full responsibility for the payment and assured to fulfil its commitments.</i>  |  |

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| 9  | 24 <sup>th</sup><br>October<br>2018  | <p>MEDS had issued various Cheques in favour of the Appellant / Plaintiff towards amounts due for the provisions supplied by the Plaintiff to Altus Uber.</p> <p>The aforesaid cheques were deposited by the Appellant / Plaintiff with the Union Bank of India.</p>  | <p>Exhibit-E of the<br/>Plaint,<br/>Pg.<br/>Nos.137 to 141<br/>of the Plaintiff.</p> |
| 10 | 25 <sup>th</sup><br>October<br>2018  | <p>The cheques issued by MEDS were dishonoured with the remark, payments stopped by the Bank.</p>   |  |
| 11 | 31 <sup>st</sup><br>October<br>2018  | <p>MEDS by its email informed the Appellant / Plaintiff that payment could not be made due to non receivables and financial crisis. MEDS once again sought time to resolve the issue.</p>   | <p>Exhibit-D of the<br/>Plaint,<br/>Pg.<br/>Nos.135 to 136<br/>of the Plaintiff</p>  |
| 12 | 27 <sup>th</sup><br>November<br>2018 | <p>The Appellant / Plaintiff issued a notice under Section 138 of the Negotiable Instruments Act 1881.</p>  | <p>Exhibit-F of the<br/>Plaint,<br/>Pg.<br/>Nos.142 to 146<br/>of the Plaintiff.</p> |
| 13 | 21 <sup>st</sup><br>December<br>2018 | <p>Appellant / Plaintiff filed Admiralty Suit no.53 of 2018 for enforcement of its maritime claim for supplies made to the Defendant vessel's sister vessel I.e. Altus Uber. The Appellant / Plaintiff's claim was for an amount of Rs.88,73,753 plus legal costs of Rs.8,00,000/- along with further interest at the rate of 20% p.a. on the principal sum of Rs.77,29,299 from the date of filing the suit till realization.</p> <p>Note:<br/>(i) The Suit is based on sister ship arrest. On the premises that both Altus Uber and</p> | <p>Para 10 of the<br/>Plaint.</p>  |

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|    |                                | <p><i>Altus Exertus are owned by MEDS;</i></p> <p><i>(ii) Alternatively, the Suit also proceeds on the basis that MEDS is the Demise / bareboat Charterer of both Altus Uber and Altus Exertus. Therefore, arrestis maintainable under Section 5(1)(b) of Admiralty Act 2017.</i></p>  |  |
| 14 | 21 <sup>st</sup> December 2018 | <p><i>This Hon'ble Court orders arrest of the Vessel Altus Exertus in Admiralty No.53 of 2018.</i></p>   |  |
| 15 | 21 <sup>st</sup> December 2018 | <p><i>Ld. Advocate for Opes Shipping appeared and submitted that he would file appearance within a week and that Opes Shipping is willing to deposit amount of Rs.96,73,753/- by 24.12.2018 by way of pay order/Demand Draft.</i></p> <p><i>This Hon'ble Court on hearing both parties directed the Registry to accept the said security and not to affect arrest order till then.</i></p>   |  |
| 16 | 7 <sup>th</sup> January 2019   | <p><i>Opes Shipping, as a cash buyer of the Defendant vessel files O.J.C.A. No.1 of 2019 ("OJCA") IN Admiralty Suit No.53 of 2018 for inter alia vacating the order of arrest on the following grounds:</i></p> <p><i>(i) The said Bareboat Charterparty was purportedly terminated on 12<sup>th</sup> December 2018;</i></p> <p><i>(ii) The said Bareboat Charterparty was purportedly terminated on 12<sup>th</sup> December 2018;</i></p> | <p><i>Para 4.1, 4.3, 4.5, 4.6 of the O.J.C.A. No. 1 of 2019, Pg. 4-6, 8,9 of the O.J. Appeal No.3 of 2019.</i></p> <p><i>Annexure 'A' to O.J.C.A No.1 of 2019 in AS No.53 of 2018, Pg. No.15-29 of O.J. Appeal No.3 of 2019.</i></p> <p><i>Annexure 'B' to O.J.C.A No.1 of</i></p> |

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|----|-------------------------------|---|---|
|    |                               | <p>(iii) Prior to the termination of the bareboat Charterparty, Respondent No.2 a MOU for the sale of Defendant vessel with Respondent by an Agreement dated 20<sup>th</sup> November 2018 (admittedly, OPES has deposited only 20% of the purchase consideration of the Defendant vessel to Respondent No.2);</p> <p>(iv) Altus Uber and Altus Exertus are not sister-ship. The Applicant / Respondent No.1 admits that MEDS was the bareboat Charterer of Defendant vessel.</p> <p>Note:</p> <p>(i) The issue of termination of the bareboat charter is dispute and contrary to the terms of the bareboat charter. The is disputed by the Appellant / Plaintiff;</p> <p>(ii) Whether termination valid or not is a triable issue;</p> <p>(iii) No proof that termination was infact received by MEDS and accepted by MEDS;</p> <p>(iv) Termination post arrest is invalid termination as the property was custodia legis;</p> | <p>2019 in AS No.53 of 2018, Pg. No.30 of O.J. Appeal No.3 of 2019.</p> <p>Annexure 'C' to O.J.C.A. No.1 of 2019 in AS No.53 of 2018, Pg. No.31-44 of O.J. Appeal No.3 of 2019.</p> |
| 17 | 16 <sup>th</sup> January 2019 | <p>No.3 of 2019 ("<b>transposition application</b>") for transposing Respondent No.2 as party Co-Applicant to the OJCA.</p>   |   |

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| 18 | 21 <sup>st</sup><br>January<br>2019  | <p><i>The Appellant/Plaintiff files its Affidavit in Reply to O.J.C.A. No.1 of 2019 in Admiralty Suit No.53 of 2018 inter alia among the following grounds:</i></p> <p><i>i) The Applicant has admittedly paid only 20% of the purchase consideration of the Defendant vessel and is thus admittedly not the owner or the cash buyer of the Defendant vessel. Therefore, the O.J.C.A. No.1 of 2019 is not maintainable for want of locus standi;</i></p> <p><i>ii) The Applicant, has failed to produce any document evidencing the sale of the Defendant vessel, like the bill of sale, protocol of delivery, etc.;</i></p> <p><i>iii) The alleged intermination of the bareboat charterparty is not in accordance with the terms of the charterparty itself. Therefore, the termination being bad, MEDS would continue to be the bareboat charterer. Thus, arrest of the bareboat chartered vessel is permissible and the present arrest is justified;</i></p> <p><i>iv) All the issues raised by the Applicant regarding alleged ownership of the Defendant vessel and alleged existence and termination of the Charterparty would require findings of fact which would</i></p> | <p><i>Para Nos.4, 5, 6, 8, 12 of the Affidavit in Reply to O.J.C.A. no.1 of 2019 Pg. 64-67 of the O.J. Appeal No.3 of 2019</i></p> |
| 19 | 21 <sup>st</sup><br>January<br>2019. | <p><i>Appellant/ Plaintiff filed a Reply to the transposition application, opposing</i></p>  |  |

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|    |                                      | <i>transposition.</i>  |  |
| 20 | 21 <sup>st</sup><br>January<br>2019  | <i>The Ld. Single Judge allowed the transposition on the ground that the interest of Respondent no.2, being the owner of the Defendant vessel cannot be contrary to the interest of Opes Shipping, for the purpose of maintainability of the suit.</i>   |  |
| 21 | 18 <sup>th</sup><br>February<br>2019 | <p><i>Impugned order is passed allowing the OJCA and dismissing the Suit on the following grounds :</i></p> <p><i>i) Arrest under Section 5(2) is not maintainable as the owners of Altus Uber and the Defendant vessel are not one and the same;</i></p> <p><i>ii) The Ld. Single Judge held that the purported termination of the bareboat charterparty was on 12<sup>th</sup> December 2018 and that the first order of arrest was prior that, i.e. on 7<sup>th</sup> December 2018.</i></p> <p><i>iii) It is merely on the basis of photograph (the website printout) of MEDS is the owner of the Defendant vessel. Since MEDS is not the owner of the two vessels, arrest is not maintainable and the Suit is liable to be dismissed.</i></p> <p><i>Note : (1) Though the Ld. Single Judge has held that demise charter and bareboat charter are one and the same, arrest under Section 5(1)(b) is maintainable. However, the Ld. Single Judge has not considered the</i></p> | <i>Pg. F-Z/33 of the O.J. Appeal no.3 of 2019.</i> |



|    |                                   |   |  |
|----|-----------------------------------|---|--|
|    |                                   | <p><i>Appellant/Plaintiff's case under Section 5(1)(b);</i></p> <p><i>(2) The Ld. Single Judge has failed to consider the alternative case of the Appellant/ Plaintiff on the basis that arrest would be maintainable under Section 5(1)(b) of the Admiralty Act, 2017;</i></p> <p><i>(3) The Ld. Single Judge has failed to even note and consider the case of the Appellant/ Plaintiff that Opes Shipping does not have the locus standi to file the OJCA and that the OJCA was filed by Opes Shipping, though Respondent No.2 was a party Applicant, the OJCA proceeds on the basis that the same was at the behest of Opes Shipping.</i></p> <p><i>(4) The Ld. Single Judge has failed to consider the Appellant / Plaintiff's case on the MOA being forged and the transfer of ownership in favour of Opes Shipping.</i></p> |  |
| 22 | 15 <sup>th</sup><br>March<br>2019 | <i>Hence the present Appeal.</i>  |  |
| 23 | 15 <sup>th</sup><br>March<br>2019 | <i>Appellants have also filed an application in O.J. Appeal No.3 of 2019 in O.J.C.A. No.1 of 2019 in AS no.53 of 2018, seeking stay of the operation and execution of the order dated 18.02.2019 and continue and direct arrest of the Defendant vessel, M. V. Altus Exertus.</i>   |  |

6. Learned counsel appearing for the appellant referred to and or relied upon, the following authorities:

(i) In case of ***Sunil B.Naik Vs. Geowave Commander***, reported in ***(2018) 5 SCC 505***; (to show as to how this judgment is not applicable to the facts of this case and to situation post enactment and enforcement of Admiralty Act, 2017).

(ii) In case of ***Srinivas Ram Kumar v. Mahabir Prasad & Ors.***, reported in ***AIR 1951 SC 177***;

7. Learned counsel appearing for the respondents placed on record written submissions on behalf of the respondents, which are reproduced verbatim as under:

**“1. Brief Facts**

1.1 The suit is filed for the recovery of amount for supply of necessaries to one vessel namely MV Altus Uber against vessel MV Exertus, Claiming that both are sister ships.

1.2 Vessel MV Altus Exertus is brought to India on 04/12/2018 by one Altus Sub Sea II AS as owner for breaking purpose at India Port. It was not even with the bareboat charterer when it had come to Indian port on 04/12/2018 while the suit is filed by plaintiff P.S. Marine on 21.12.2018. Therefore, the vessel was under the control of owner moreover, even prior to that the vessel was under registered mortgage w.e.f. 27.11.2018 with one OPES Shipping Ltd.

## **2. Findings given by Hon'ble Single Judge:**

2.1 The plaintiff has stated that one MEDS is owner of both ships namely MV Altus Uber and MV Altus Exertus. For dues of M.V. Altus Uber arrest order was sought against M.V. Altus Exertus treating it as sistership. For relying contention snap shot of website of MEDS at Pg. 147 is produced wherein MEDS has shown availability of 3 ships with them i.e. 1) MV Altus Exertus, 2) MV Altus Optimus & 3) MV Altus Uber.

2.2 Defendant appeared and claimed that owner of both ships are different, and document of ownership were produced, Considering the documents of registered ownership of two ships namely M.V. Altus Uber and M.V. Altus Exertus (defendant vessel) at para 58 & 59 of O.J.C.A 1/2019 in A.S. No.53/2018 the ld. Judge held that the ownership of both vessels are of different persons. Therefore, they cannot be treated as sisterships and hence the Hon'ble single Judge had vacated the arrest order and dismissed the suit by holding that no claim is maintainable against defendant vessel for the dues of vessel MV Altus Uber.

2.3 Findings of Hon'ble single Judge is at paragraph 58, 59, 60 & 61 of the judgment.

### 3. Case of Defendant:

3.1 The defendant after appearing has produced documents of title/ownerships of both the vessel, by filing civil application no.1/2019 in suit.

a. MV Altus Uber ownership document of registration certificate at Pg.60 owned by Swordfish Shipco. Ltd.

b. The Ownership of MV Altus Exertus (defendant Vessel) belongs to Altus Sub Sea II As. Registration Certificate (Pg.45)

3.2 Interpretation of Section 5(2) of 2017 Act, for ready reference section 5(2) is reproduced herein below:

#### **“5. Arrest of vessel in rem.-**

(2) The High Court may also order arrest of any other vessel for the purpose of providing security against a maritime claim, **in lieu** of the vessel against which a maritime claim has been made under this Act, subject to the provisions of sub-section (1): Provided that no vessel shall be arrested under this sub-section in respect of a maritime claim under clause (a) of sub-section (1) of section 4.”

3.3 The law provides that “in lieu off” offending vessel other vessel can be arrested.

3.4 In the present case claim is against vessel MV Altus Uber. It is on record that vessel MV Altus Uber is already available within jurisdiction of Indian Court and the plaintiff himself had relied on the judgment of M.V. Altus Uber delivered by Hon'ble Bombay High Court as well as plaintiff was having knowledge of the arrest. Under such circumstances suit against present defendant vessel namely Altus Exertus is not maintainable, as offending vessel is available within jurisdiction of Indian Court, as suit against sister-ship is only maintainable, if offending vessel is not available.

3.5 Above both aspect are not answered by the plaintiff.

3.6 So far as the decision relief by appellant i.e. **Stem Offshore Rederi As vs Altus Uber** is contrary to the judgment **Sunil B. Naik v/s Geowave Commander** delivered by Hon'ble Apex Court. Even otherwise it is not on similar facts of this case.

3.7 In the present case offending vessel “M.V. Altus Uber” is available at Bombay; therefore suit is even otherwise is not maintainable against any other vessel, by treating it “sister vessel”.

3.8 In Admiralty law vessel itself is treated as “person” therefore, when offending vessel is available suit is maintainable for its due against itself only.

#### **4. Decisions Relied**

##### **(i) 1997 (2) GLR 1745**

##### **SHIPPING CORPORATION OF INDIA LTD vs. THE MASTER OF M V “GIURGENT”**

Paragraphs relied on: 13 & 14

13. Learned Counsel has urged that, this say of the Supreme Court commands that foreign ship could be arrested, provided the Indian Courts are empowered to do so by domestic law of this country or in any of the cases recognised under Brussels Convention. Further contention coming from learned Counsel in this respect is that the power to arrest a Sister Ship has not been granted under the Indian Statute and that, India not being a signatory to Brussels Convention, such power or jurisdiction cannot be assumed by the Indian Courts. But this contention coming from the learned Counsel stands repelled by the say of the Supreme Court in Para 85 in M.V. Elisabeth. The material portion in the said paragraph runs thus:

“Although India has not adopted the various Brussels Conventions (See the Conventions

listed above), the provisions of these Conventions are the result of international unification and development of the maritime laws of the world, and can, therefore, be regarded as the international common law or transnational law rooted in and evolved out of the general principles of national laws, which, in the absence of specific statutory provisions, can be adopted and adapted by Courts to supplement and complement national statutes on the subject. In the absence of a general Maritime Code, these principles aid the Courts in filling up the lacunae in the Merchant Shipping Act and other enactments concerning shipping. "Procedure is but a handmaiden of justice and the cause of justice can never be allowed to be thwarted by any procedural technicalities".

Para 87 in M.V. Elisabeth says:-

"Access to Court which is an important right vested in every citizen implies the existence of the power of the Court to render justice according to law. Where statute is silent and judicial intervention is required, Courts strive to redress grievances according to what is perceived to be principles of justice, equity and good conscience".

(Emphasis is mine)

Thus, upon a careful reading of the say of the Supreme Court in M.V. Elisabeth, I would say that it is abundantly clear that, in the absence of a general Maritime Code the principles

accepted and recognised under the International Common Law or the Brussels Convention could be resorted to. The Court in filling up the lacunae in the Merchant Shipping Act can override the procedural technicalities. This has been said by the Apex Court after recognising the fact that India has not adopted various Brussels Conventions. No signing of the Brussels Convention therefore should not block the Jurisdiction and Power of this Court in its Admiralty Jurisdiction.

14. Thus, I shall have to say that the provisions contained under Section 443 and 444 of the Merchant Shipping Act, 1958 cannot be said to be the repository of the powers of arrest of a foreign ship. The said Act of 1958 cannot be recognised as self-contained Code or a Code perfect in itself. Looking to the say of the Supreme Court in *M.V. Elisabeth*, it is clear to me that, in absence of specific statutory provisions in the Indian Statute the Court can fill up the lacunae and while doing so the regard could be had to the Brussels Conventions and known Principles of International Law under Statutes or Common Law. It is not in dispute that, now since 1956 the English Administration of Justice Act, 1956 statutorily grants the jurisdiction to the English High Courts for arrest of a sister ship. If our statutory provisions are found to be having lacuna and falling short the principle as obtainable under the Statutes of other



countries recognised in the International Common Law and/or under the Brussels Convention can be made applicable by the Indian High Courts. The latter is true despite the fact that India has not adopted various Brussels Conventions.”

**(ii) LAWS (BOM) 2017 7 110**

**SIVA BULK LTD. V/S M.V. AOADABAO AND ANR.**

Paragraphs relied on : 30, 31, 33, 35, 47 to 50

“30. The submission of Mr. Pratap in response was that if the order of arrest is vacated or recalled on the ground that the jurisdictional test as set out in the 1999 Arrest Convention is not satisfied, the suit in rem terminates and is liable to be dismissed. Alternatively, it is open to the Court to reject the plaint and dismiss the suit under Order 7 Rule 11 of the Code of Civil Procedure, 1908 as 1<sup>st</sup> defendant vessel is not a sister ship and consequently there is no cause of action against the said vessel. Such powers can be exercised suo motu in the absence of any application. I agree with Mr. Pratap. This has been so held by the Hon'ble Supreme Court of India in the case of Umesh Chandra Saxena & Ors. V/s Administrator General, U.P. Allahabad and others 3, AIR (1999) Allahabad 109 where the Court observed that “we would only add that an action under Order 7 Rule 11 of CPC does not

await an application by any party". This was followed and applied by this Court in Rushab Shipping International LLC v/s. The Bunkers on board the ship M.V. AFRICAN EAGLE 4, 2014 SCC OnLine Bom 620 The Court proceeded to reject the plaint without any application having been filed by defendant.

31. In the present case, therefore recall of the order of arrest on the ground that the vessel is not a sister ship is itself sufficient for dismissal of the suit since the Court would have no jurisdiction to proceed against 1<sup>st</sup> defendant vessel. Alternatively, it is open to this Court to suo motu reject the plaint on the ground that it is barred by law and as not disclosing any cause of action against defendant no.1 vessel under Order 7 Rule 11(a) of CPC.

33. Though generally in interlocutory proceedings Courts express only its tentative view, that is not the case in the matter at hand. The findings of the single judge is, "It would be vexatious and oppressive and an abuse of the process of the Court to maintain the arrest of defendant no.1. No equity minded Court would countenance continuation of the order of arrest for a single day more in the facts and circumstances of the case". In view of such a finding, the suit ought to be dismissed and/OR the plaint rejected. Not only the plaint does not disclose a clear right to sue but plaintiff's case is based on falsehood that 1<sup>st</sup> defendant is a

sister ship of 2<sup>nd</sup> defendant even though the document of ownership of 1<sup>st</sup> defendant proves otherwise and these were not even disputed by plaintiff. Thus, plaintiff had no right to approach this Court and ought to be summarily thrown out. Plaintiff knew and/or ought to have known that 1<sup>st</sup> defendant was owned by Aodabao Shipping (HK) Co. Ltd., Hong Kong, whose sole shareholders and Directors were two Chinese nationals Mr. Sun Xian Liang and Mr. Chen Dong Sheng. Their ownership details were publicly available with the Registrar of Companies, Hong Kong and could have easily been obtained by Plaintiff. Moreover when 1<sup>st</sup> defendant produced them, plaintiff did not dispute the same. In fact, plaintiff should have voluntarily asked the ship to be released. Instead they chose to maintain their false and untenable argument that the ship was owned by COSCO, which was false to their knowledge.

35. In the present case plaintiff came to Court with a false case that 1<sup>st</sup> defendant vessel was beneficially owned by COSCO with a view to securing an order of arrest and obtaining security. COSCO stands for China Ocean Shipping Group Co. as per plaintiff's own documents and also their pleading in paragraph 2 is "It is beneficially owned by COSCO, Beijing, China." 1<sup>st</sup> defendant produced ownership document to show that the vessel was not owned by COSCO and that

COSCO was a company owned by the Chinese Government and it can never be alleged that a Government of a country was indulging in fraudulent activities of setting up a sham company to defraud creditors. 1<sup>st</sup> defendant also produced document to show that COSCO was merged with another Chinese State owned company called China Shipping (Group) Company on 4<sup>th</sup> January, 2016 and the merged entity was named as China COSCO Shipping Corporation Ltd. In the circumstances, COSCO as an entity did not even exist on the date of arrest which was 7<sup>th</sup> March, 2016. When faced with this, plaintiff stood completely exposed and thereafter plaintiff changed its stand and said that COSCO stands for Cross Ocean Shipping Company Ltd.

47. Summarizing the position, once an ex-parte order of arrest is recalled and/or vacated on the ground that either there is no maritime claim or the owner of the vessel is not liable in respect of the claim or that the vessel is not a sister ship of the vessel liable in respect of the claim, then in all such cases the action in rem terminates and the suit in rem is liable to be dismissed. This is because arrest is a means of assuming jurisdiction. If the order assuming jurisdiction is vacated or recalled on the abovementioned grounds, then it means that the Court is of the view that there is no jurisdiction to arrest the ship. In the event, the suit is also in personam against other

defendants against whom the Court has jurisdiction not by virtue of arrest of the vessel but otherwise, then the suit may proceed in personam against such defendants.

48. In the present case the order of arrest was vacated on the ground that "plaintiff have miserably failed in establishing, even prima facie, that the Beneficial Owner of defendant no.1 vessel and defendant no.2 is COSCO". This is a jurisdictional requirement that the vessel must be a sister ship which plaintiff has failed to satisfy.

49. I must hasten to add that there could be a situation where security is ordered to be returned on the ground that though the Court has jurisdiction to arrest the ship, yet no case for security is made out because plaintiff has failed to make out a prima facie case that they have suffered a loss or on quantum. In such case the suit may well continue in personam if the owner of the ship is made a party or there is submission to jurisdiction (as there would be if the owner contests on merits). There could also be situations where the Court comes to a finding on merits that there is no cause of action in contract or in tort and dismisses the suit against the vessel and its owner (as in the case of the Bunga Bidara). Hence there could be other fact situations. However, if the arrest is vacated on the ground that the jurisdictional requirements are not satisfied then the action

in rem terminates and the suit cannot be proceeded further and is liable to be dismissed. No application is necessary. The order vacating the arrest is sufficient.

50. Hence, suit dismissed with costs. For this hearing the plaintiff to pay a sum of Rs.2,00,000/- as costs to 1<sup>st</sup> defendant.”

**(iii) 2018 (5) SCC 505**

**SUNIL B.NAIK V/S GEOWAVE  
COMMANDER**

Paragraphs relied on: 61 to 69

“**61.** Even in Canada, the Federal Court of Appeal has taken the same view on the import of the words “beneficial owner” in the context of the Canadian “Federal Court Act, 1985” which confers courts with the jurisdiction to arrest a ship. In *Mount Royal/ Walsh Inc. v. Jensen Star, The Ship*<sup>39</sup> Marceau, J. writing on behalf of the Bench, stated as follows:

“The problem, however, is that I simply do not see how a court could suppose the parliament may have meant to include a demise charterer in the expression “beneficial owner” as it appears in Sections 43(3). whatever be the meaning of the qualifying term “beneficial”, the word “owner” can only normally be used in reference to title in the res itself, a title characterised essentially by the right to dispose of the res. The French corresponding

word “proprietaire” is equally clear in that regard. These words are clearly inapt to describe the possession of a demise charterer... in my view, the expression “beneficial owner” was chosen to serve as an instruction, in a system of registration of ownership rights, to look beyond the register in searching for the relevant person. But such search cannot go so far as to encompass a demise charterer who has no equitable or proprietary interest which could burden the title of the registered owner. As I see it, the expression “beneficial owner” serves to include someone who stands behind the registered owner in situations where the latter functions merely as an intermediary, like a trustee, a legal representative or an agent. The French corresponding expression “veritable proprietaire” leaves no doubt to that effect.”

62. The Supreme Court of Canada in *Antares Shipping Corpn. v. Capricorn, The Ship 40* also referred to the concept of beneficial ownerships and cited with approval, the observations made in *Halsbury's Laws of England* at para 15 as follows:

“ownership in a British ship or share therein may be acquired in any of three ways – by transfer from a person entitled to transfer, by transmission or by building. Acquisition by transfer and transmission have been the subject of statutory enactment. Acquisition by building is governed by the common law. Ownership in

a British ship or share therein is a question of fact and does not depend upon registration of title. Whether registered or unregistered, a person in whom ownership in fact vests is regarded in law as the owner if registered, as the legal owner; if unregistered, as the beneficial owner.”

(emphasis supplied)

**63.** The successor to the 1956 Act is the Supreme Court Act of 1981. Section 21(4) of that Act of the UK recognises the discussion in view of Robert Goff, J. by the following provision:

“**21.(4)** in the case of any such claim as is mentioned in Section 20(2)(e) to (r ), where-

(a) the claim arises in connection with a ship; and

(b) the person who would be liable on the claim in an action in personam (“ the relevant person”) was, when the cause of action arose, the owner or charterer of, or in possession or in control of, the ship,

an action in rem may (whether or not the claim gives rise to a maritime lien on that ship) be brought in the High Court against-

(I) that ship, if at the time when the action is brought the relevant person is either the beneficial owner of that ship as respects all the shares in it or the charterer of it under a charter by demise; or

(II) any other ship of which, at the time



when the action is brought, the relevant person is the beneficial owner as respects all the shares in it.”

**64.** There is a clear distinction between a beneficial ownership of a ship and the charterer of a ship.

**65.** In the aforesaid context, now turning to the Arrest Convention of 1999, Article 1 specifies that the maritime claim means a claim inter alia arising out of an agreement relating to use or hire of “the ship”. The connotation of “ the ship” would mean the 16 trawlers or Orion Laxmi and not the respondent ship. Thus, there is no maritime claim against the respondent ship. Article 3 deals with the exercise of rights of arrest and the eventualities are specified thereunder. In terms of clause (2) of Article 3 (these Articles are reproduced in paras 24 to 26 above), the arrest is permissible of any other ship (which would connote the respondent ship), which, when the arrest is effected is owned by the person who is liable for the maritime claim. The liability of the maritime claim is reflect Geophysical and not the owners of the respondent ship. In terms of sub-clause (b) of clause (2) of Article 3, a demise charterer, time charterer or voyage charterer of that ship is liable. The ship in question, as noticed above, is not the respondent but the 16 trawlers or Orion Laxmi. In view of the discussion aforesaid, really speaking Reflect Geophysical

cannot be a demised charterer of the respondent ship. Reflect Geophysical is not the owner of the respondent ship and the owner cannot be made liable for a maritime claim, which is against the trawlers and Orion Laxmi.

**66.** we may also note that in the 2017 Act in India Section 5(1)(b) states as under:

**“5. Arrest of vessel in rem.-**(1) The High Court may order arrest of any vessel which is within its jurisdiction for the purpose of providing security against a maritime claim which is the subject of an admiralty proceeding, where the courts has reason to believe that-

(b) The aforesaid is in consonance with Article 3 of the 1999 Convention and, thus, must be read in that context (incidentally the Bill was introduced on 21-11-2016 and passed by the Lok Sabha and the Rajya Sabha on 10-3-2017 and 24-7-2017 respectively. It was published in the Gazette on 9-8-2017 but is still not notified). The incident in this question is, thus, prior to beginning of this exercise. The expressions “the vessel”, “owner” and “demise charterer”, thus, must be read in the aforesaid context and the maritime claims in respect of 16 trawlers and Orion Laxmi cannot be converted into a maritime claim against the respondent ship no owned by reflect Geophysical.

**68.** The appellants have neither any agreement with the owners of the respondent

vessel not any claim against the respondent vessel but their claim is on account of their own vessels hired by the charterer of the respondent vessel. There is no claim against the owners of the respondent vessel.

69. The result of the aforesaid is that the appeals are dismissed leaving the parties to bear their own costs.”

**(iv) AIR 1993 SC 1014**

**M.V. ELISABETH AND ANOTHER V. M/S HARWAN INVESTMENT AND TRADING CO. AND ANOTHER**

“47. The foundation of an action in rem, which is a peculiarity of the Anglo-American law, arises from a maritime lien or claim imposing a personal liability upon the owner of the vessel. A defendant in an admiralty action in personam is liable for the full amount of the plaintiffs established claim. Likewise, a defendant acknowledging service in action in rem is liable to be saddled with full liability even when the amount of the judgment exceeds the value of the res or of the bail provided. An action in rem lies in the English High Court in respect of matters regulated by the Supreme Court Act, 1981, and in relation to a number of claims the jurisdiction can be invoked not only against the offending ship in question but also against a 'sistership' I.e., a ship in the same beneficial ownerships as the ship in regard to which the claim arose.

59. The real purpose of arrest in both the

English and the Civil Law systems is to obtain security as a guarantee for satisfaction of the decree, although arrest in England is the basis of assumption of jurisdiction, unless the owner has submitted to jurisdiction. In any event, once the arrest is made and the owner has entered appearance, the proceedings continue in personam. All actions in the civil law – whether maritime or not – are in personam, and arrest of a vessel is permitted even in respect of non-maritime claims, and the vessel is treated as any other property of the owner, and its very presence within jurisdiction is sufficient to clothe the competent tribunal with jurisdiction over the owner in respect of any claim. (See D.C. Jackson, Enforcement of Maritime Claims, (1985) Appendix 5). Admiralty actions in England, on the other hand, whether in rem or in personam, are confined to well defined maritime liens or claims and directed against the res (ship, cargo and freight) which is the subject-matter of the dispute or any other ship in the same beneficial ownership as the res in question.”

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8. Learned counsel appearing for the respondent relied upon the following authorities:

(i) In case of ***Shipping Corporation of India Ltd. Vs. The Master of M.V. “Giurgeni”***, reported in ***1997 (2) GLR 1745***;

(ii) In case of ***Siva Bulk Ltd. Vs. M.V. Aoadabao***

***And Anr.***, reported in ***LAWS (BOM) 2017 7 110;***

(iii) In case of ***Sunil B. Naik V/s. Geowave Commander***, reported in ***2018 (5) SCC 505;***

(iv) In case of ***M.V. Elisabeth And Another Vs. M/s. Harwan Investment And Trading Co. And Another***, reported in ***AIR 1993 SC 1014;***

9. Heard learned counsels appearing for the parties and perused the papers and order impugned. It would be most appropriate to set out the legal proposition obtaining in the field and touching upon the present controversy so as to appreciate the rival contentions of the counsels of the parties for arriving at a conclusion.

10. The Admiralty Suit, the arrest of ship and the proceedings prior to the advent of The Admiralty act 2017 the entire proceedings governed by the international conventions and the decisions rendered by the Courts on the subject. The law evolved on the maritime claim is essentially for catering to the safety and security aspect of the merchants and laity dealing with the vessels so as to prevent any unscrupulous master or owner of the vessels from defrauding, duping the persons dealing with ship and vessels. Over the period of time, the concept of maritime claim got crystalized and the methodology of enforcing such claim against the vessels got consolidated in form of various international conventions and the decisions rendered by the Court on the subject. It is very important to note that as the sea going vessels and the maritime claim against them involved international communities, there was a requirement of general uniformity

for defining the maritime claims and the methodology to enforce the same against the vessel.

11. It is also required to be borne in mind that essentially maritime claim are against the offending vessels whether they are in default or they have wronged in tort. Therefore, the claim were required to be realized from the vessel for which the coastal courts were clothed with appropriate jurisdiction not only for arresting the ship but realizing the maritime claim after proper adjudication. So far as the Indian position was concerned, the same was very much crystallized after the Supreme Court rendered decision in case of ***M.V. Elisabeth v. Harwan Investment & trading (P) Ltd.***, reported in ***AIR 1993 Supreme Court 1014***. The subsequent conventions namely the International Conventions on Arresting of Ship 1999 and others paved way for more articulate methodology of enforcing and realizing maritime claim against the vessels. The Supreme Court has very elaborately discussed this law in case of Sunil B. Naik V/s. Geowave Commander (supra). The relevant paragraphs thereof are extracted hereunder for the purpose of ready reference.

***“maritime claims and Admiralty jurisdiction in India***

*15. This Court in MV Elisabeth v. Harwan Investment & trading (P) Ltd. had an opportunity to discuss the scope of exercise of the admiralty jurisdiction and consequently of an action in rem. The Admiralty Court Act, 1861, was referred to in this behalf but that was stated not to inhibit the exercise of*

*jurisdiction by the High Court subject to its own rules, in exercise of its maritime jurisdiction by the High Court subject to its own rules, in exercise of its maritime jurisdiction. The fact that the High Court continues to enjoy the same jurisdiction as it had immediately before the commencement of the Constitution (Article 225 of the Constitution of India) was to be read in the context of the judicial sovereignty of the country manifested in the jurisdiction of the High Courts as superior courts, thus, though the colonial statutes may remain in force, by virtue of Article 372 of the Constitution of India, that was observed not to stultify the growth of law or blinker its vision or fetter its arms. The latter Admiralty Act of 1890 was said not to incorporate any particular English statute into the Indian law for the purpose of conferring admiralty jurisdiction, but to assimilate the competent courts in India to the position of the English High Court. The lack of legislative exercise was noted with regret. The said lament apparently has still not had its full impact!*

17. We may note that these Acts were referred to by Mr. Shekhar Naphade, learned Senior Advocate appearing for the appellant, Sunil B. Naik, for purposes of elucidating the expanding admiralty jurisdiction as observed in *M.V. Elisabeth*. Thus, Section 3(1)(h), (j) and (l) of the 1987 Act were referred, which

*read as under:*

**“3. Admiralty Jurisdiction of the Court. –**

*(1) The Admiralty Jurisdiction of the Court shall be as follows, that is to say, Jurisdiction to hear and determine any of the following questions or claims:*

\* \* \*

*(h) Any claim arising out of any Agreement relating to the carriage of goods in a ship or to the use or hire of a ship;*

\* \* \*

*(j) Any claim in the nature of towage in respect of a ship or any aircraft;*

\* \* \*

*(l) Any claim in respect of goods, materials, bunker or other necessaries supplied to a ship for her operation of maintenance.”*

20. Mr. Prashant S. Pratap, learned Senior Advocate appearing for the respondent referred to the same judgment in *M.V. Elisabeth & Ors.*<sup>4</sup> to emphasise that despite the expanding jurisdiction of the courts, certain fundamentals have to be kept in mind as reflected in the observations made in the said judgment. As to what is the object of exercise of jurisdiction in rem and the manner of exercise is discussed in the following paragraphs:

“44. “The law of admiralty, or maritime law,



*.... (is the) corpus of rules, concepts, and legal practices governing ... the business of carrying goods and passengers by water.” (Gilmore and Black, The Law of Admiralty, page 1). The vital significance and the distinguishing feature of an admiralty action in rem is that this jurisdiction can be assumed by the coastal authorities in respect of any maritime claim by arrest of the ship, irrespective of the nationality of the ship or that of its owners, or the place of business or domicile or residence of its owners or the place where the cause of action arose wholly or in part.*

*‘In admiralty the vessel has a juridical personality, an almost corporate capacity, having not only rights but liabilities (sometimes distinct from those of the owner) which may be enforced by process and decree against the vessel, binding upon all interested in her and conclusive upon the world, for admiralty in appropriate cases administers remedies in rem, i.e., against the property, as well as remedies in personam, i.e., against the party personally ....” (Benedict, The Law of American Admiralty, 6th ed., Vol. I p. 3.)*

*45. Admiralty Law confers upon the claimant a right in rem to proceed against the ship or cargo as distinguished from a*

*right in personam to proceed against the owner. The arrest of the ship is regarded as a mere procedure to obtain security to satisfy judgment. A successful plaintiff in an action in rem has a right to recover damages against the property of the defendant. "The liability of the ship owner is not limited to the value of the res primarily proceeded against .... An action ... though originally commenced in rem, becomes a personal action against a defendant upon appearance, and he becomes liable for the full amount of a judgment unless protected by the statutory provisions for the limitation of liability".'* (Roscoe's Admiralty Practice, 5th ed. p. 29)

46. The foundation of an action in rem, which is a peculiarity of the Anglo-American law, arises from a maritime lien or claim imposing a personal liability upon the owner of the vessel. A defendant in an admiralty action in personam is liable for the full amount of the plaintiff's established claim. Likewise, a defendant acknowledging service in an action in rem is liable to be saddled with full liability even when the amount of the judgment exceeds the value of the res or of the bail provided. An action in rem lies in the English High Court in respect of matters regulated by the Supreme Court Act 1981, and in relation to a number of claims the

*jurisdiction can be invoked not only against the offending ship in question but also against a 'sistership' i.e., a ship in the same beneficial ownership as the ship in regard to which the claim arose.*

*"...The vessel which commits the aggression is treated as the offender, as the guilty instrument or thing to which the forfeiture attaches, without any reference whatsoever to the character or conduct of the owner..." (Per Justice Story, The United States v. The Big Malek Adhel [43 US (2 How) 210, 233 (1844)] .*

\* \* \*

*58. The real purpose of arrest in both the English and the Civil Law systems is to obtain security as a guarantee for satisfaction of the decree, although arrest in England is the basis of assumption of jurisdiction, unless the owner has submitted to jurisdiction. In any event, once the arrest is made and the owner has entered appearance, the proceedings continue in personam. All actions in the civil law — whether maritime or not — are in personam, and arrest of a vessel is permitted even in respect of non-maritime claims, and the vessel is treated as any other property of the owner, and its very presence within jurisdiction is sufficient to clothe the competent tribunal with jurisdiction over the owner in respect of any claim. [See D.C. Jackson, Enforcement of Maritime Claims, (1985) Appendix 5] .*

*Admiralty actions in England, on the other hand, whether in rem or in personam, are confined to well defined maritime liens or claims and directed against the res (ship, cargo and freight) which is the subject-matter of the dispute or any other ship in the same beneficial ownership as the res in question.”*

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*“98. What then was the jurisdiction that the Court of England exercised in 1890? The law of Admiralty was developed by English courts both as a matter of commercial expediency and due to equity and justice. Originally it was a part of common law jurisdiction, but the difficulty of territorial limitations, constraints of common law and the necessity to protect the rights and interests of its own citizens resulted in growth of maritime lien a concept distinct from common law or equitable lien as it represents a charge on maritime property of a nature unknown alike to the common law or equity. The Privy Council explained it as ‘a claim or privilege upon a thing to be carried into effect by legal process’. Law was shaped by exercise of discretion to what appeared just and proper in the circumstances of the case. Jurisdiction was assumed for injurious act done on high seas and the scope was extended,*

*'not only to British subjects but even to aliens'. Maritime law has been exercised all over the world by Maritime powers. In England it was part of Municipal law but with rise of Britain as empire the law grew and it is this law, that is, 'Maritime Law that is administered by the Admiralty Court'. From the Maritime law sprang the right known as Maritime lien ascribing personality to a ship for purposes of making good loss or damage done by it or its master or owner in tort or contract. In England it grew and was developed in course of which its scope was widened from damage done by a ship to claims of salvor, wages, bottomry, supply of necessaries and even to bills of lading. Its effect was to give the claimant a charge on res from the moment the lien arose which follows the res even if it changed hands. In other words a maritime lien represented a charge on the maritime property. The advantage which accrued to the maritime lienee was that he was provided with a security for his claim up to the value of the res. The essence of right was to identify the ship as wrongdoer and compel it by the arrest to make good the loss. Although the historical review in England dates back to the 14th Century but its statutory recognition was much later and*

*'maritime law came to jurisprudential maturity in the first half of the 19th Century' [Maritime Liens by D.R. Thomas]. And the first statutory recognition of such right came in 1840 when the Admiralty Court Act of 1840 was enacted empowering the admiralty court to decide all questions as to the title or ownership of any ship or vessel or the procedure thereof remaining in the territory arising in any cause of possession, salvage, damage, wages or bottomry. By clause (6) of the Act jurisdiction was extended to decide all claims and demands whatsoever in the nature of salvage for services rendered to or damage received by any ship or sea-going vessel or in the nature of towage or for necessaries supplied to any foreign ship or sea-going vessel and the payment thereof whether such ship or vessel may have been within the body of a country or upon the high seas at the time when the services were rendered or damage received or necessary furnished in respect of such claims. But the most important Act was passed in 1861 which expanded power and jurisdiction of courts and held the field till it was replaced by Administration of Justice Act, 1920. The importance of the Act lay in introducing the statutory right to arrest the res on an action in rem.*

*Section 35 of the 1861 Act provided that the jurisdiction by the High Court of Admiralty could be exercised either by proceedings in rem or proceedings in personam. "The essence of the rem in procedure is that 'res' itself becomes, as one might say, the defendant, and ultimately the 'res' the ship may be arrested by legal process and sold by the Court to meet the plaintiff's claim. The primary object, therefore, of the action in rem is to satisfy the claimant out of the res'. If the 1840 Act was important for providing statutory basis for various types of claims then 1861 Act was a step forward in expanding the jurisdiction to claims of bill of lading. Section 6 of the Act was construed liberally so as to confer jurisdiction and the expression 'carried into any port was' was expanded to mean not only when the goods were actually carried but even if they were to be carried. Further the section was interpreted as providing additional remedy for breach of contract. By the jurisdiction Act of 1873 the court of Admiralty was merged in High Court of Justice. Result was that it obtained jurisdiction over all maritime cases. Therefore what was covered by enactments could be taken cognisance of in the manner provided in the Act but there was no bar in respect of any cause*

*of action which was otherwise cognizable and arose in Admiralty. Section 6 of 1861 Act was confined to claim by the owner or consignee or assignee of any bill of lading of any goods carried into any port in England or Wales (to be read as India). But it did not debar any action or any claim by the owner or consignee or assignee of any bill of lading in respect of cargo carried out of the port. Even if there was no provision in 1861 Act, as such, the colonies could not be deprived under 1890 Act from exercising jurisdiction on those matters which were not provided by 1861 Act but could be exercised or were otherwise capable of being exercised by the High Court of England. 'The theory was that all matters arising outside the jurisdiction of common law i.e. outside the body of a country were inside the jurisdiction of Admiralty'. 'That this Court had originally cognizance of all transaction civil and criminal, upon the high seas, in which its own subjects were concerned, is no subject of controversy'. To urge, therefore, that the Admiralty court exercising jurisdiction under 1890 Act could not travel beyond 1861 Act would be going against explicit language of the Statute. Even now, the Admiralty jurisdiction of the High Court of Justice*



*in England is derived 'partly from Statute and partly from the inherent jurisdiction of Admiralty' . Observations of Lord Diplock in Eschersheim, that Admiralty jurisdiction was statutory only have to be understood in the context they were made. By 1976 the statutory law on Admiralty had become quite comprehensive. Brother Thommen, J., has dealt with it in detail. Therefore those observations are not helpful in deciding the jurisdiction that was exercised by the High Court in England in 1890."*

*(emphasis supplied)*

21. *The emphasis of the respondent is, thus, on the maritime claim being maintained against the owner of the ship and detention of a ship as a sequitur thereto as security for a decree liable to be passed against the owners of the ship in personam. Since the claim is stated to be one against Reflect Geophysical and not against the owners, such a detention could not have been made, it was contended. Reflect Geophysical, in fact, has not even been made a party to the suit, the entity, which would be liable in personam.*

***International Convention on Arrest of ship, 1999:***

22. *The provisions of the aforesaid Convention have been referred to especially keeping in mind the observations of this Court in*

*Liverpool & London S.P. & I Association Limited v. M.V. Sea Success I & Anr. 5, which read as under:*

*“57. This Court in M.V. Elisabeth v. Harwan Investment and Trading (P) Ltd., 1993 Supp (2) SCC 433] observed that Indian statutes lag behind any development of international law and further it had not adopted the various conventions but opined that the provisions thereof having been made as a result of international unification and development of the maritime laws of the world should be regarded as the international common law or transnational law rooted in and evolved out of the general principles of national laws, which, in the absence of any specific statutory provisions can be adopted and adapted by courts to supplement and complement national statutes on this subject.”*

\* THE HIGH COURT \* OF GUJARAT \*

*“59. M.V. Elisabeth, 1993 Supp (2) SCC 433] is an authority for the proposition that the changing global scenario should be kept in mind having regard to the fact that there does not exist any primary act touching the subject and in absence of any domestic legislation to the contrary; if the 1952 Arrest Convention had been applied, although India was not a signatory thereto, there is obviously no reason as to why the 1999 Arrest Convention should*

*not be applied.*

*60. Application of the 1999 Convention in the process of interpretive changes, however, would be subject to: (1) domestic law which may be enacted by Parliament; and (2) it should be applied only for enforcement of a contract involving public law character.”*

*23. Therefore, in the interest of international comity, though India is not a signatory to the Convention of 1999, the principles of the same are utilized and applied to appropriate situations to determine whether a ‘maritime claim’, as understood in the international context has arisen and whether the same warrants the arrest of the vessel in question as per its provisions.*

*24. Article 1 of the Convention defines ‘Maritime Claim to include:*

*“1. **Definitions.** - For the purposes of this Convention:*

*1. “**Maritime Claim**” means a claim arising out of one or more of the following:*

*\* \* \**

*“(f) any agreement relating to the use or hire of the ship, whether contained in a charter party or otherwise;*

*(l) goods, materials, provisions, bunkers, equipment (including containers) supplied or services rendered to the ship for its operation,*

*management, preservation or maintenance;*

*25. Article 2 stipulates the powers of arrest and sub-clause (2) clarifies that the ship may be arrested only respect a maritime claim. Sub-clause (3) stipulates that ship may be arrested for purposes of obtaining security notwithstanding that by virtue of a jurisdiction clause or arbitration clause, it has to be adjudicated in a State other than the State where it has been arrested. For an elucidation we reproduce the said clauses:*

***“2 Powers of arrest - \* \* \****

*(2) A ship may only be arrested in respect of a maritime claim but in respect of no other claim.*

*(3) A ship may be arrested for the purpose of obtaining security notwithstanding that, by virtue of a jurisdiction clause or arbitration clause in any relevant contract, or otherwise, the maritime claim in respect of which the arrest is effected is to be adjudicated in a State other than the State where the arrest is effected, or is to be arbitrated, or is to be adjudicated subject to the law of another State.”*

*26. Article 3 deals with the exercise of right of arrest, which reads as under:*

***“ 3. Exercise of right of arrest - (1) Arrest is permissible of any ship in respect of which a***

*maritime claim is asserted if:*

*(a) the person who owned the ship at the time when the maritime claim arose is liable for the claim and is owner of the ship when the arrest is effected; or*

*(b) the demise charterer of the ship at the time when the maritime claim arose is liable for the claim and is demise charterer or owner of the ship when the arrest is effected; or*

*(c) the claim is based upon a mortgage or a "hypothèque" or a charge of the same nature on the ship; or*

*(d) the claim relates to the ownership or possession of the ship; or*

*(e) the claim is against the owner, demise charterer, manager or operator of the ship and is secured by a maritime lien which is granted or arises under the law of the State where the arrest is applied for.*

*(2) Arrest is also permissible of any other ship or ships which, when the arrest is effected, is or are owned by the person who is liable for the maritime claim and who was, when the claim arose:*

*(a) owner of the ship in respect of which the maritime claim arose; or*

*(b) demise charterer, time charterer or voyage charterer of that ship.*

*This provision does not apply to claims in respect of ownership or possession of a ship.*

*3. Notwithstanding the provisions of paragraphs (1) and (2) of this article, the arrest of a ship which is not owned by the person liable for the claim shall be permissible only if, under the law of the State where the arrest is applied for, a judgment in respect of that claim can be enforced against that ship by judicial or forced sale of that ship.”*

*32. In the aforesaid context it may be noticed that in Section 1 of the Administration of Justice Act, 1956, the Admiralty jurisdiction could be invoked inter alia in the following case:*

***“1. Admiralty jurisdiction of the High Court - (1) The Admiralty jurisdiction of the High Court shall be as follows, that is to say, jurisdiction to hear and determine any of the following questions or claims -***

*\* \* \**

*(h) any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship;”*

*33. A reference, has, thus, also been made to the decision in The “Permina 3001 of the Singapore Court of Appeal, the relevant portion of which reads as under:*

*“The question is what do the words “beneficially owned as respects all the*

*shares therein” mean in the context of the Act. These words are not defined in the Act. Apart from authority, we would construe them to refer only to such ownership of a ship as is vested in a person who has the right to sell, dispose of or alienate all the shares in that ship. Our construction would clearly cover the case of a ship owned by a person, who whether he is the legal owner or not, is in any case the equitable owner of all the shares therein. It would not, in our opinion, cover the case of a ship which is in the full possession and control of a person who is not also the equitable owner of all the shares therein. In our opinion, it would be a misuse of language to equate full possession and control of a ship with beneficial ownership as respects all the shares in a ship. The word “ownership” connotes title, legal or equitable whereas the expression “possession and control”, however full and complete, is not related to title. Although a person with only full possession and control of a ship, such as a demise charterer, has the beneficial use of her, in our opinion he does not have the beneficial ownership as respects all the shares in the ship and the ship is not “beneficially owned as respects all the shares therein” by him within the meaning of s.4(4).”*

***The legal view which prevailed with the courts below***

*36. The bedrock of the submissions of Mr. Prashant S. Pratap, learned Senior Advocate, who appeared even in the proceedings before the Courts below would show that the plea of no right of arrest of the respondent vessel was based on Reflect Geophysical not being the owner but only a charterer of the vessel. The essential ingredients for maintaining a maritime claim for which a vessel may be detained were specified as under:*

*“In order to ascertain whether in an action in rem filed in the Admiralty jurisdiction of the court, the Plaintiff is entitled to an order of arrest of the Defendant vessel, the following needs to be established:*

*(a) The plaintiff has a maritime claim;*

*(b) The vessel in respect of which the plaintiff has a maritime claim;*

*(c) The party liable in personam in respect of the maritime claim; and*

*(d) The party liable in personam is the owner of the vessel sought to be arrested.*

*37. The learned single Judge opined that the claim in Yusuf Abdul Gani’s case was in respect of use or hire of another ship Orion Laxmi and the claim, thus, could not be maintained against the respondent vessel. It was stated to be a claim in personam against Reflect Geophysical and thus, only a vessel*



*owned by Reflect Geophysical could have been restrained. The learned single Judge also records that it has not been the case of Yusuf Abdul Gani that Reflect Geophysical is a de facto owner of the ship sought to be arrested and the position of an owner of a ship is different from a demised charter when it comes to the arrest of a vessel owned or chartered. In this behalf a reference has been made to the case of Polestar Maritime Ltd. v. M.V. Qi Lin Men & Ors.<sup>11</sup> where Article 3(2) of the Arrest Convention was elucidated specifying that a ship can be arrested in respect of a maritime claim against another ship only in the following circumstances:*

*(a) The owner of both the ships is one and the same.*

*(b) In case a maritime claim exists qua the owner of a ship, which is taken on a demised charter then the liability can be recovered by restraint of the ship owned by the charterer.*

*This view originally elucidated by the learned single Judge of the Bombay High Court found favour with the Division Bench when the appeal was dismissed vide order dated 6.1.2009 in Appeal (Lodging) No.772/2008. The Special Leave Petition filed against the same was also dismissed vide order dated 23.1.2009.*

*38. The conclusion, thus, was that there was*

*no principle or authority for proposition that a maritime claim for unpaid charter hire in respect of vessel 'A' against the hirer thereof can be enforced by arresting vessel 'B', which is on bareboat charter of the hirer of the former vessel vis-à-vis vessel 'A'.*

*41. Insofar as the respondent vessel is concerned, there is no agreement entered into by either of the two appellants and, thus, it cannot be a maritime claim in respect of Article 1(1)(f) of the Arrest Convention. Consequently, there would be no occasion to arrest the vessel under Article 3(1)(b) of the Arrest Convention as no maritime claim has resulted in the hands of the demised charterer with regard to the demised vessel. The maritime claim by either of the appellants could, thus, be enforced only by arresting another vessel owned by Reflect Geophysical and the de facto ownership, could not be converted into a de jure ownership. In respect of Article 1(1)(1), it was, once again, held that there was no supply of goods to the vessel or of supply of services to the vessel in question, which was the respondent vessel. Insofar as the reasoning in Sunil B. Naik's case, so far as Article 1(1)(1) is concerned, it has been categorically found that it was not a case where goods had been given on hire or for use of the respondent vessel.*

**Conclusion:**

*42. On giving our thoughtful consideration to*

*the issue at hand, we are in full agreement with the view taken by the Courts below and find no reason to interfere in appeal.*

*43. We have referred to the various terms of the bareboat charter which make it quite clear that Reflect Geophysical had the status of a de facto owner. The charter agreement did contain a clause for conversion of the status into a de jure owner but the occasion for the same never arose. The option to purchase was to be exercised by an advance intimation of six months prior to the end of the charter period and the purchase price was also specified as US\$ 3,01,50,000. The charterer could not make any structural changes in the vessel or in the machinery, boilers, appurtenances or space parts thereof without first securing the owner's approval and the vessel had to be restored to its former condition before the termination of the charter, if so required by the owners. This was, thus, a deed between the owner of the respondent and Reflect Geophysical.*

*44. The contracts entered into with the appellants by Reflect Geophysical are completely another set of charter hire agreements/contracts. The unpaid amounts under these contracts amount to claims against Reflect Geophysical. Thus, if there was another vessel owned by Reflect Geophysical, the appellants would have been well within their rights to seek detention of that vessel as*

*they have a maritime claim but not in respect of the respondent vessel. The maritime claim is in respect of the vessels which are owned by the appellants and the party liable in personam is Reflect Geophysical. Were the respondent vessel put under the de jure ownership of Reflect Geophysical, the appellants would have been within their rights to seek a detention order against that vessel for recovery of their claims.*

*45. In the facts of the present case the owners of the respondent vessel, in fact, also have a claim against Reflect Geophysical for unpaid charter amount. Thus, unfortunately it is both the owner of the respondent vessel on the one hand and the appellants on the other, who have a maritime claim against Reflect Geophysical, which has gone into liquidation. The appellants quite conscious of the limitations of any endeavour to recover the amount from Reflect Geophysical, have ventured into this litigation to somehow recover the amount from, in effect, the owners of the respondent vessel by detention of the respondent vessel. That may also be the reason why the appellants did not even think it worth their while to implead Reflect Geophysical against whom they have their claim in personam, possibly envisaged as a futile exercise.*

*46. It is in the aforesaid context that while discussing this issue in the impugned order,*

*the essential ingredients for detention of a vessel in a maritime claim were specified (para 36 to 40 aforesaid).*

*47. The aforesaid issue has also been discussed in Polestar Maritime Ltd.<sup>13</sup> while dealing with Article 3(2) of the Arrest Convention. The test of the ownership of both the ships as one and the same is not satisfied in the present case. The second situation envisaged is where another ship owned by the charterer is detained, i.e., he has taken 'A' ship on charter where he has only de facto ownership and his ship 'B' is detained where charterer has de jure ownership. It cannot be countenanced that where no in personam claim lies against an entity, still the ship of that entity taken on bareboat charter can be detained to recover the dues. The owner of the respondent vessel is as much a creditor of Reflect Geophysical as the appellants.*

*48. Mr. Naphade, learned Senior Advocate while relying on the judgment in M.V. Elisabeth & Ors.<sup>14</sup> had referred to the expanding jurisdiction of a maritime claim. However, the observations made in the said judgment reproduced hereinabove in para 21 would show that the arrest of the ship is regarded as a mere procedure to obtain security to satisfy the judgment. To that extent it is distinguished from a right in personam to proceed against the owner but there has to be a liability of the ship owner and in that*

*eventuality the legal proceedings commenced in rem would become a personal action in personam against the defendant when he enters appearance. There cannot be a detention of a ship as a security and guarantee arising from its owner for a claim which is in respect of a non-owner or a charterer of the ship.*

*49. On turning to the provisions of the Convention, a maritime claim is specified as relating to use or hire of a ship whether contained in a charter party or otherwise [clause (f)]. Insofar as clause (l) is concerned they relate inter alia to services rendered to the ship. The question, however, is – which is the ship in question? Such an order of detention can be in respect of a ship where there is identity of the owner against whom the claim in personam lies and the owner of the ship. It cannot be used to arrest a ship of a third party or a non-owner.*

*50. As an illustrative example if we consider the principles of a garnishee order where amounts held by a third party on behalf of a defendant can be injuncted or attached to satisfy the ultimate claim, which may arise against the defendant. It is not as if somebody else's money is attached in pursuance to a garnishee's order. Similarly for a claim against the owner of the vessel, a vessel may be detained and not that somebody else's vessel would be detained for the said purpose.*

*The crucial test would be of ownership, which in the present case clearly does not vest with Reflect Geophysical and the de facto ownership under their bareboat charter cannot be equated to a de jure owner, which is necessary for an action in personam.*

*51. We may note that for the purposes of determining the controversy, it is not really of much relevance that effectively no work was carried out under the agreements between the appellants and Reflect Geophysical as the chartered ship never commenced its task and never reached the port from where the task was to be commenced.*

*52. One of the contentions advanced by the learned Senior Advocate for the appellant recorded by us relates to the plea of "beneficial ownership" of the respondent ship by Reflect Geophysical and, thus, the enforceability of a claim by the appellants against the respondent ship. In support of this plea reliance is placed on the judgment in Medway Drydock & Engineering Co. Ltd.<sup>15</sup>. We must record at the inception itself that this issue appears not to have been raised either before the learned single Judge or the Division Bench as there is no discussion on this aspect. We, however, still feel necessary to deal with this aspect and in some detail largely based on our own foray into this area of law rather than simply relying on the judgment referred to aforesaid.*

53. *The United Kingdom became a signatory to two international conventions – ‘International Convention relating to Arrest of Sea Going Ships’ and ‘International Convention on certain Rules concerning Civil Jurisdiction in matters of Collision’ signed at Brussels on 10.5.1952. Article 3 of the former in sub-clause (2) states that “Ships shall be deemed to be in the same ownership when all the shares therein are owned by the same person or persons.” The context is, thus, the ownership of the ship when a reference is made to “shares therein” and whether they are owned by the same person or not. “Shares” in a ship owes its origination to sailing vessels being expensive items and subject to unexpected loss and thus, were not owned by one person. Thus, more than one person could own a share in a ship on the basis of capital tied up in the vessel. Such shares were fairly random but by mid 19th century it was usual for shares to be in multiples of 64 parts and, thus, ownership by 64 th is still the norm in England. The various requirements of a ship, for example, rope-maker, sail maker, etc. were parts of a share owner and such shares could be sold or bought like any other commodity. Normally there would be a main owner who would have a large investment and be responsible for the sail and working of the ship called “ship’s husband” while other owners were simply cash investors. The profits and liabilities were*



*accordingly shared in the same ratio. This concept finds mention in The Merchant Shipping Act, 1958 under Section 25, which deals with 'Register Book' as under:*

***"25. Register book.***—Every registrar shall keep a book to be called the register book and entries in that book shall be made in accordance with, the following provisions:—

\* \* \*

*(b) subject to the provisions of this Act with respect to joint owners or owners by transmission, not more than ten individuals shall be entitled to be registered at the same time as owners of any one ship; but this rule shall not affect the beneficial interest of any number of persons represented by or claiming under or through any registered owner or joint owner;"*

*55. The observations in Medway Drydock & Engineering Co. Ltd.<sup>16</sup> referred to while recording the submissions of Mr. Naphade, have to be appreciated in that context. However, a deeper study of the issue shows that this judgment has been dissented from even by the Queen's Bench itself in I Congreso Del Partido by Robert Goff, J. This judgment debates the concept of "beneficially owned" in respect of shares therein within the meaning of Section 3(4) of The Administration of Justice Act, 1956. There is a respectful disagreement with the line adopted by Brandon, J. in the Medway Drydock &*

*Engineering Co. Ltd.*<sup>18</sup>. Thus, it is noticed that Brandon, J. construed the words “beneficially owned as respects all the shares therein” as not being restricted to legal or equitable ownership, but as being wide enough to include such “ownership” as is conferred by a demise charter. Robert Goff, J. recorded the reasoning of Brandon, J. for doing so as under:

“...The reasoning of Brandon J. which led him to reach this conclusion was as follows: (1) The expression “beneficially owned” in section 3 (4) is capable of more than one meaning: either owned by someone who, whether he is the legal owner or not, is in any case the equitable owner; or beneficially owned by a person who, whether he was the legal or equitable owner or not, lawfully had full possession and control of her, and, by virtue of such possession and control, had all the benefit and use of her which a legal or equitable owner would ordinarily have. An example of the latter would be such “ownership” as was conferred by a demise charter. A demise charterer has, because of the extent of his possession and control, often been described as the owner *pro hac vice* or the temporary owner. (2) Since the meaning of the words “beneficially owned” is not clear the court can and should look at the terms

*of the Brussels Convention of 1952, section 3 of the Act of 1956 being intended to give effect to article 3 of the Convention; and having done so the court should so construe the statute as to give effect, so far as possible, to the presumption that Parliament intended to fulfil, rather than to break, its international obligations. If section 3 (4) of the Act is to give full effect to article 3, the expression "beneficially owned" in the section must be given the second of the two meanings of which it is capable, which embraces not only a demise charterer, but also any other person with similar complete possession and control. (3) Although Hewson J. had reached a different conclusion in *The St. Merriel* [1963] P. 247, Brandon J. felt justified in declining to follow that decision having regard in particular to two points. First, Hewson J. had not been invited to look at the Brussels Convention, because at that time it was commonly thought that it was not permissible to do so unless the Act contained an express reference to the Convention. Second, the view accepted by Hewson J. in *The St. Merriel* was no different in principle from one which was discussed and rejected by Lord Atkinson in *Sir John Jackson Ltd. v. Steamship Blanche (Owners)* (*The**

*Hopper No. 66), [1908] AC 135–36.”*

58. *We have been persuaded to extract in extensio from the judgment in I Congreso Del Partido<sup>20</sup> on account of the clarity of the view expressed by Robert Goff, J. finding it difficult to be put in better words. Thus, mere possession of the ship, however, complete and whatever be the extent of the control was not found good enough to confer the status of ownership. The “beneficial use” of a chartered ship would not ipso facto convert the status of a charterer into a “beneficial owner.” The attention to the word “beneficial” in the Act of 1956 was, thus, attributed to the requirement to take into account the special English Institution of Trust which forms no part of domestic law of other signatories to the Convention.*

59. *In The “Father Thames, The Sheen J. also declined to follow Medway Drydock & Engineering Co. Ltd. and followed I Congreso Del Partido and held that the phrase “beneficially owned” in the 1956 Act did not apply to a demise charter.*

61. *Even in Canada, the Federal Court of Appeal has taken the same view on the import of the words “beneficial owner” in the context of the Canadian “Federal Court Act 1985’ which confers courts with the jurisdiction to arrest a ship. In Mount Royal/Walsh Inc. v. The Ship Jensen Star, The Ship Marceau, J. writing on behalf of the Bench, stated as*

*follows :*

*“The problem, however, is that I simply do not see how a court could suppose that Parliament may have meant to include a demise charterer in the expression 'beneficial owner' as it appears in s-s. 43(3). Whatever be the meaning of the qualifying term 'beneficial', the word owner can only normally be used in reference to title in the res itself, a title characterized essentially by the right to dispose of the res. The French corresponding word 'proprietaire' is equally clear in that regard. These words are clearly inapt to describe the possession of a demise charterer.... In my view, the expression 'beneficial owner' was chosen to serve as an instruction, in a system of registration of ownership rights, to look beyond the register in searching for the relevant person. But such search cannot go so far as to encompass a demise charterer who has no equitable or proprietary interest which could burden the title of the registered owner of the registered owner. As I see it, the expression 'beneficial owner' serves to include someone who stands behind the registered owner in situations where the latter functions merely as an intermediary, like a trustee, a legal representative or an agent. The French corresponding expression 'veritable*

*proprietaire' leaves no doubt to that effect."*

*64. There is a clear distinction between a beneficial ownership of a ship and the charterer of a ship.*

*65. In the aforesaid context, now turning to the Arrest Convention of 1999, Article 1 specifies that the maritime claim means a claim inter alia arising out of an agreement relating to use or hire of "the ship." The connotation of "the ship" would mean the 16 trawlers or the Orion Laxmi and not the respondent ship. Thus, there is no maritime claim against the respondent ship. Article 3 deals with the exercise of rights of arrest and the eventualities are specified thereunder. In terms of Page 54 of 57 clause (2) of Article 3 (these Articles are reproduced in paras 25 to 27 above), the arrest is permissible of any other ship (which would connote the respondent ship), which, when the arrest is effected is owned by the person who is liable for the maritime claim. The liability of the maritime claim is Reflect Geophysical and not the owners of the respondent ship. In terms of sub-clause (b) of clause (2) of Article 3, a demise charterer, time charterer or voyage charterer of that ship is liable. The ship in question, as noticed above, is not the respondent but the 16 trawlers or the Orion Laxmi. In view of the discussion aforesaid, really speaking Reflect Geophysical cannot be*

*said to be the beneficial owner in the capacity of a demised charterer of the respondent ship. Reflect Geophysical is not the owner of the respondent ship and the owner cannot be made liable for a maritime claim, which is against the trawlers and Orion Laxmi.*

66. We may also note that in the 2017 Act in India clause 5(b) states as under:

*“5. Arrest of vessel in rem.—(1) The High Court may order arrest of any vessel which is within its jurisdiction for the purpose of providing security against a maritime claim which is the subject of an admiralty proceeding, where the court has reason to believe that—*

*\* \* \**

*(b) the demise charterer of the vessel at the time when the maritime claim arose is liable for the claim and is the demise charterer or the owner of the vessel when the arrest is effected; or”*

67. The aforesaid is in consonance with Article 3 of the 1999 Convention and, thus, must be read in that context (incidentally the Bill was introduced on 21.11.2016 and passed by the Lok Sabha and the Rajya Sabha on 10.3.2017 and 24.7.2017 respectively. It was published in the Gazette on 9.8.2017 but is still not notified). The incident in this question is, thus, prior to beginning of this exercise.

*The expression “the vessel”, “owner” and “demise charterer”, thus, must be read in the aforesaid context and the maritime claims in respect of 16 trawlers and Orion Laxmi cannot be converted into a maritime claim against the respondent ship not owned by Reflect Geophysical.”*

*(emphasis supplied)*

12. The provision in India till 2017, there was not codified law in the form of enactment which came into being with the promulgation of Admiralty Act, 2017. The relevant provisions thereof read as under:

**“2. Definitions.—(1) In this Act,—**

*(a) ....*

*(b) “admiralty proceeding” means any proceeding before a High Court, exercising admiralty jurisdiction;*

*(c) “arrest” means detention or restriction for removal of a vessel by order of a High Court to secure a maritime claim including seizure of a vessel in execution or satisfaction of a judgment or order;*

*(d)...*

*(e) ...*

*(f) “maritime claim” means a claim referred to in section 4;*

*(g) “maritime lien” means a maritime claim against the owner, demise charterer, manager*



*or operator of the vessel referred to in clauses (a) to (e) of sub-section (1) of section 9, which shall continue to exist under sub-section (2) of that section;*

*(h) ...*

*(I) ...*

*(j) ...*

*(k) ...*

*(l) "vessel" includes any ship, boat, sailing vessel or other description of vessel used or constructed for use in navigation by water, whether it is propelled or not, and includes a barge, lighter or other floating vessel, a hovercraft, an off-shore industry mobile unit, a vessel that has sunk or is stranded or abandoned and the remains of such a vessel.*

**4. Maritime claim.**—(1) *The High Court may exercise jurisdiction to hear and determine any question on a maritime claim, against any vessel, arising out of any —*

*(a) dispute regarding the possession or ownership of a vessel or the ownership of any share therein;*

*(b) dispute between the co-owners of a vessel as to the employment or earnings of the vessel;*

*(c) mortgage or a charge of the same nature on a vessel;*

*(d) loss or damage caused by the operation*

*of a vessel;*

*(e) loss of life or personal injury occurring whether on land or on water, in direct connection with the operation of a vessel;*

*(f) loss or damage to or in connection with any goods;*

*(g) agreement relating to the carriage of goods or passengers on board a vessel, whether contained in a charter party or otherwise;*

*(h) agreement relating to the use or hire of the vessel, whether contained in a charter party or otherwise;*

*(i) salvage services, including, if applicable, special compensation relating to salvage services in respect of a vessel which by itself or its cargo threatens damage to the environment;*

*(j) towage;*

*(k) pilotage;*

*(l) goods, materials, perishable or non-perishable provisions, bunker fuel, equipment (including containers), supplied or services rendered to the vessel for its operation, management, preservation or maintenance including any fee payable or leviable;*

*(m) construction, reconstruction, repair, converting or equipping of the vessel;*

*(n) dues in connection with any port, harbour, canal, dock or light tolls, other tolls, waterway*

*or any charges of similar kind chargeable under any law for the time being in force;*

*(o) claim by a master or member of the crew of a vessel or their heirs and dependents for wages or any sum due out of wages or adjudged to be due which may be recoverable as wages or cost of repatriation or social insurance contribution payable on their behalf or any amount an employer is under an obligation to pay to a person as an employee, whether the obligation arose out of a contract of employment or by operation of a law (including operation of a law of any country) for the time being in force, and includes any claim arising under a manning and crew agreement relating to a vessel, notwithstanding anything contained in the provisions of sections 150 and 151 of the Merchant Shipping Act, 1958 (44 of 1958);*

*(p) disbursements incurred on behalf of the vessel or its owners; (q) particular average or general average;*

*(r) dispute arising out of a contract for the sale of the vessel;*

*(s) insurance premium (including mutual insurance calls) in respect of the vessel, payable by or on behalf of the vessel owners or demise charterers;*

*(t) commission, brokerage or agency fees payable in respect of the vessel by or on behalf of the vessel owner or demise charterer;*

*(u) damage or threat of damage caused by the vessel to the environment, coastline or related interests; measures taken to prevent, minimise, or remove such damage; compensation for such damage; costs of reasonable measures for the restoration of the environment actually undertaken or to be undertaken; loss incurred or likely to be incurred by third parties in connection with such damage; or any other damage, costs, or loss of a similar nature to those identified in this clause;*

*(v) costs or expenses relating to raising, removal, recovery, destruction or the rendering harmless of a vessel which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such vessel, and costs or expenses relating to the preservation of an abandoned vessel and maintenance of its crew; and*

*(w) maritime lien.*

*Explanation.—For the purposes of clause (q), the expressions “particular average” and “general average” shall have the same meanings as assigned to them in sub-section (1) of section 64 and sub-section (2) of section 66 respectively of the Marine Insurance Act, 1963 (11 of 1963).*

*(2) While exercising jurisdiction under sub-section (1), the High Court may settle any account outstanding and unsettled between the parties in relation to a vessel, and direct*

*that the vessel, or any share thereof, shall be sold, or make such other order as it may think fit.*

*(3) Where the High Court orders any vessel to be sold, it may hear and determine any question arising as to the title to the proceeds of the sale.*

*(4) Any vessel ordered to be arrested or any proceeds of a vessel on sale under this Act shall be held as security against any claim pending final outcome of the admiralty proceeding.*

**5. Arrest of vessel in rem.**—*(1) The High Court may order arrest of any vessel which is within its jurisdiction for the purpose of providing security against a maritime claim which is the subject of an admiralty proceeding, where the court has reason to believe that—*

*(a) the person who owned the vessel at the time when the maritime claim arose is liable for the claim and is the owner of the vessel when the arrest is effected; or*

*(b) the demise charterer of the vessel at the time when the maritime claim arose is liable for the claim and is the demise charterer or the owner of the vessel when the arrest is effected; or*

*(c) the claim is based on a mortgage or a charge of the similar nature on the vessel; or*

*(d) the claim relates to the ownership or*

*possession of the vessel; or*

*(e) the claim is against the owner, demise charterer, manager or operator of the vessel and is secured by a maritime lien as provided in section 9.*

*(2) The High Court may also order arrest of any other vessel for the purpose of providing security against a maritime claim, in lieu of the vessel against which a maritime claim has been made under this Act, subject to the provisions of sub-section (1): Provided that no vessel shall be arrested under this sub-section in respect of a maritime claim under clause (a) of sub-section (1) of section 4.*

13. It is interesting to note at this stage that Article 3(1) of the Arrest Convention could be compared with Section 5(1) and for ready reference the comparison provided by the appellant's counsel deserves to be set out verbatim as under:

| <b>Sr. No.</b> | <b>1999 Arrest Convention</b>   | <b>Admiralty Act, 2017</b>   |
|----------------|---|--|
| 1              | <p><u>Article 3 (1):</u><br/>-Permits arrest of “any ship in respect of which a maritime claim is asserted...”</p> <p><i>Provided</i></p> <p>a. The person who owned the vessel at the time when the maritime claim arose is liable for the claim and is the owner of the vessel when the</p> | <p><u>Section 5(1)”</u><br/>-Permits arrest of “any vessel which is within its jurisdiction...”</p> <p><i>Provided</i></p> <p>a. The person who owned the vessel at the time when the maritime claim arose is liable for the claim and is the owner of the vessel when the arrest is effected;</p> |

|   |   |  |
|---|---|--|
|   | <p><i>arrest is effected;</i></p> <p><i>b. the demise charterer of the vessel at the time when the maritime claim arose is liable for the claim and is the demise charterer or the owner of the vessel when the arrest is effected;</i></p> <p>...</p> <p><i>An arrest under Article 3(1) is possible is only if a maritime claim arises "in respect of" a vessel which is sought to be arrested. This means that the claim has to be with respect to the offending vessel only and not a claim against any other vessel.</i></p> | <p><i>b. the demise charterer of the vessel at the time when the maritime claim arose is liable for the claim and is the demise charterer or the owner of the vessel when the arrest is effected;</i></p> <p>...</p> <p><i>Under Section 5(1) there are no words such "in respect of which". This means that a maritime claim need not necessarily arise against the offending vessel. In fact, Section 5(1) is much wider it contemplates "arrest of any vessel" where the "court has reason to believe" (a) the maritime claim is against the owner of the vessel sought to be arrested; (b) claim is against the demise charterer who is either the owner or the demise charterer when the arrest is effected. Clause (c) onwards is not applicable in the facts of the present case.</i></p> |
| 2 | <p><i>Article 3(2) :</i></p> <p><i><u>"Article 3(2). Arrest is also permissible of any other ship or ships which, when the arrest is effected, is or are owned by the person who is liable for the maritime claim and who was, when the claim arose:</u></i></p> <p><i>(a) owner of the ship in</i></p>   | <p><i>Section 5(2) :</i></p> <p><i><u>"The High Court may also order arrest of any other vessel for the purpose of providing security against a maritime claim, in lieu of the vessel against which a maritime claim has been made under this Act, subject to the provisions of sub-section (1)"</u></i></p>   |

|  |   |  |
|--|---|--|
|  | <p><u>respect of which the maritime claim arose; or</u></p> <p><u>(b) demise charterer, time charterer or voyage charterer of that ship.</u></p> <p><u>This provision does not apply to claims in respect of ownership or possession of a ship.”</u></p>          |  |
|  | <p><i>Under Article 3(2) arrest is possible of any vessel which is the sister vessel of the offending vessel or is the vessel which is “owned by” the demise, voyage or time charterer of the offending vessel at the time when the maritime claim arose.</i></p> | <p><i>Section 5(2) is clearly subject to Section 5(1). However, Article 3(2) is independent of Article 3(1).</i></p> <p><i>Article 5(2) unlike Article 3(2) permits arrest of any other vessel “in lieu of” the offending vessel subject to Section 5(1). No such provision existed under the 1999 Arrest Convention.</i></p> <p><i>Thus, under Section 5(2) arrest is permissible of any vessel that when the arrest is affected, is under demise charter to the same charterer who was the demise charterer of the offending vessel and against whom the maritime claim arose.</i></p> |

14. Thus, perusal of both would indicate that the concept of arrest of sister ship is not introduced for the first time, so far as the Indian situation is concerned though India was not a signatory to the international convention but the law was followed as held by Supreme Court in Sunil B. Naik V/s. Geowave Commander (supra). The following proposition of law emerges from the aforesaid discussion which would be helpful in appreciating the controversy on hand namely;



The maritime claim means claim arising out of one of the Act prescribe in Section 4 of the Admiralty Act, 2017, which deserves to be set out as under.

**4. Maritime claim.**—(1) *The High Court may exercise jurisdiction to hear and determine any question on a maritime claim, against any vessel, arising out of any —*

*(a) dispute regarding the possession or ownership of a vessel or the ownership of any share therein;*

*(b) dispute between the co-owners of a vessel as to the employment or earnings of the vessel;*

*(c) mortgage or a charge of the same nature on a vessel;*

*(d) loss or damage caused by the operation of a vessel;*

*(e) loss of life or personal injury occurring whether on land or on water, in direct connection with the operation of a vessel;*

*(f) loss or damage to or in connection with any goods;*

*(g) agreement relating to the carriage of goods or passengers on board a vessel, whether contained in a charter party or otherwise;*

*(h) agreement relating to the use or hire of the vessel, whether contained in a charter party or otherwise;*

*(i) salvage services, including, if applicable, special compensation relating to salvage services in respect of a vessel which by itself or its cargo threatens damage to the environment;*

*(j) towage;*

*(k) pilotage;*

*(l) goods, materials, perishable or non-perishable provisions, bunker fuel, equipment (including containers), supplied or services rendered to the vessel for its operation, management, preservation or maintenance including any fee payable or leviable;*

*(m) construction, reconstruction, repair, converting or equipping of the vessel;*

*(n) dues in connection with any port, harbour, canal, dock or light tolls, other tolls, waterway or any charges of similar kind chargeable under any law for the time being in force;*

*(o) claim by a master or member of the crew of a vessel or their heirs and dependents for wages or any sum due out of wages or adjudged to be due which may be recoverable as wages or cost of repatriation or social insurance contribution payable on their behalf or any amount an employer is under an obligation to pay to a person as an employee, whether the obligation arose out of a contract of employment or by operation of a law (including operation of a law of any country) for the time being in force, and includes any*

*claim arising under a manning and crew agreement relating to a vessel, notwithstanding anything contained in the provisions of sections 150 and 151 of the Merchant Shipping Act, 1958 (44 of 1958);*

*(p) disbursements incurred on behalf of the vessel or its owners; (q) particular average or general average;*

*(r) dispute arising out of a contract for the sale of the vessel;*

*(s) insurance premium (including mutual insurance calls) in respect of the vessel, payable by or on behalf of the vessel owners or demise charterers;*

*(t) commission, brokerage or agency fees payable in respect of the vessel by or on behalf of the vessel owner or demise charterer;*

*(u) damage or threat of damage caused by the vessel to the environment, coastline or related interests; measures taken to prevent, minimise, or remove such damage; compensation for such damage; costs of reasonable measures for the restoration of the environment actually undertaken or to be undertaken; loss incurred or likely to be incurred by third parties in connection with such damage; or any other damage, costs, or loss of a similar nature to those identified in this clause;*

*(v) costs or expenses relating to raising,*

*removal, recovery, destruction or the rendering harmless of a vessel which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such vessel, and costs or expenses relating to the preservation of an abandoned vessel and maintenance of its crew; and*

*(w) maritime lien.*

*Explanation.—For the purposes of clause (q), the expressions “particular average” and “general average” shall have the same meanings as assigned to them in sub-section (1) of section 64 and sub-section (2) of section 66 respectively of the Marine Insurance Act, 1963 (11 of 1963).*

*(2) While exercising jurisdiction under sub-section (1), the High Court may settle any account outstanding and unsettled between the parties in relation to a vessel, and direct that the vessel, or any share thereof, shall be sold, or make such other order as it may think fit.*

*(3) Where the High Court orders any vessel to be sold, it may hear and determine any question arising as to the title to the proceeds of the sale.*

*(4) Any vessel ordered to be arrested or any proceeds of a vessel on sale under this Act shall be held as security against any claim pending final outcome of the admiralty proceeding.*

The power of arrest for enforcing the maritime claim is with the coastal Court on a condition prescribed under Section 5(1) and 5(1)(b). The arrest is permissible of any ship in respect of which a maritime is asserted if:

*(a) the person who owned the ship at the time when the maritime claim arose is liable for the claim and is owner of the ship when the arrest is effected; or*

*(b) the demise charterer of the ship at the time when the maritime claim arose is liable for the claim and is demise charterer or owner of the ship when the arrest is effected; or*

*(c) the claim is based upon a mortgage or a "hypothèque" or a charge of the same nature on the ship; or*

*(d) the claim relates to the ownership or possession of the ship; or*

*(e) the claim is against the owner, demise charterer, manager or operator of the ship and is secured by a maritime lien which is granted or arises under the law of the State where the arrest is applied for.*

Thus, what is important is not the arrest, because arrest is only for the purpose of realizing the claim as the vessel arrested is to act as a security and therefore the claim *in rem* is infact essentially culminated into action *in personam* and hence the condition of the ownership or control of the

ship *de jure* is also equally important.

15. Bearing the aforesaid proposition in mind, if the facts of this case examined closely, it would clearly emerge that the appellant's claim cannot be said to be justified on various counts. The appellant were required to assert and establish unequivocally that M/s. Altus Exertus was in fact a sister ship of M.V. Altus Uber in terms of the *de jure* ownership also. Even it is accepted that the provision of Section 5 and 5(2) would permit the arrest of sister ship of the offending vessel, then also the sister ship has to be shown to be sister ship so as to secure the claim *in personam* against the owner and therefore if one looks at the fact from this angle, it would be very clear that those facts are unfortunately not coming forward. The appellant, original plaintiff, has made the following averments in Admiralty Suit No.53 of 2018 wherefrom the judgment has arisen, which deserves to be set out as under:

*para-2 : The defendant vessel is a foreign flagged vessel, flying the flag of Liberia. The defendant vessel along with her hull, tackle, engines, gear, boiler, machinery, plant, apparels, furniture, equipment and other paraphernalia is presently lying at the Port of Bhavnagar / Alang within the Admiralty and Vice Admiralty jurisdiction of this Hon'ble Court. The Defendant vessel and M.V. Altus Uber (IMP No. 9385300) (hereinafter referred to as "M.V. Altus Uber") are sister vessels which are **both owned by one Marine Engineering Diving Services FZC***

*(hereinafter referred to as "MEDS"). However, it has come to light from orders of the Bombay High Court that MEDS claims to be a bare boat charterer of the vessel M.V. Altus Uber.*

*Para-4 (n) : The plaintiff state that since inception, it has diligently supplied provisions to M.V. Altus Uber and has performed its part of the understanding reached between itself and MEDS. M.V. Altus Uber and MEDS, as its owner received the said provisions without any demur and/or complaint. Despite the same, there were repeated failures on the part of MEDS in making payments to the Plaintiff.*

*Para-4 : The Plaintiff states that the Defendant vessel and M.V. Altus Uber, to which the Plaintiff has made supplies, are both owned by MEDS and are thus, sister vessels. The same is evident from the website of MEDS that shows both the Defendant vessel and M.V. Altus Uber as two vessels owned by it. A screenshot of the website of MEDS mentioning the names of both the vessels is attached hereto and marked as **Exhibit "G"**.*

*para-5. Further the Plaintiff states that as per an order dated 25<sup>th</sup> September, 2018 passed by Hon'ble Justice Shri K.R. Shriram of the Hon'ble High Court of Bombay, in a Commercial Notice of Motion (L) No. 1392 of*

*2018 filed in Commercial Admiralty Suit (L) No. 20 of 2018, MEDS claims to be the bareboat charterer of M.V. Altus Uber. However, the plaintiff denies this position that MEDS is the bareboat charterer of M.V. Altus Uber. The plaintiff craves leave to refer and rely upon the aforesaid judgment of the Hon'ble Bombay High Court.*

*Para-8 : The Plaintiff further submit that in any event, assuming whilst denying that MEDS is the bareboat / demise charterer of M.V. Altus Uber (as claimed by MEDS before the Hon'ble Bombay High Court), the Plaintiff is still permissible to arrest the Defendant vessel. This is because, MEDS was the bareboat charterer of M.V. Altus Uber when the maritime claim arose. Thus, the plaintiff would still be entitled to arrest the Defendant vessel as per Section 5(1)(b) of the Admiralty Act, 2017. In any event, the Defendant vessel is owned by MEDS, against whom an in personam liability for the maritime claim exists under Section 5(1)(a) of the Act.*

*Para-10: The Plaintiff submits that the Defendant vessel and MEDS, her Owner are liable to pay to the Plaintiff, a principal sum of Rs.77,29,299 as payment due under the invoices raised by the Plaintiff for supply of provisions of M.V. Altus Uber, along with an amount of Rs.11,44,454 (being interest @ 20% p.a. On the sum overdue from the date of the*



*outstanding amount became due till date). Therefore, the plaintiff is entitled to claim a sum of Rs.88,73,753 plus legal costs of Rs.8,00,000 along with further interest @ 20% p.a. On the principal sum of Rs.77,29,299 from the date of filing the suit till the date of payment / realization, as per particulars of the claim. The Plaintiff is entitled to enforce their maritime claim and to exercise their rights in rem against Defendant vessel by its arrest, detention, condemnation and sale.*

*Para-11: The Plaintiff further submits that in the event MEDS, the owner of the Defendant vessel fails to secure the Plaintiff's claim, this Hon'ble Court be pleased to pass an order of condemnation and sale of the Defendant vessel and for the sale proceeds thereof to be deposited with the Admiralty Registry of this Hon'ble High Court.*

*Para-12 : The Plaintiff states that the Defendant vessel is the only known asset available for enforcement of its maritime claim. The Defendant vessel is owned by a foreign owner having no known assets in India. The Plaintiff is entitled to proceed against the Defendant vessel for recovery of its claim in the present Suit.*

16. The respondent has filed O.J.C.A. No.1 of 2019 in A.S. No.53 of 2018 and for vacating the arrest order and

dismissing the suit and the present appellant has filed reply. The relevant paragraphs from the reply deserve to be set out as under:

*para-7: The Applicant alleged that the Defendant vessel was on bare boat charterparty (hereinafter referred to as “Charterparty”) to Marine Engineering and Diving Services FZC (hereinafter referred to as “MEDS”). I deny that MEDS is the bareboat charterer of the Defendant vessel. Further, the existence and contents of the said charterparty are denied and the Applicant is put to strict proof thereof. Pertinently, the Plaintiff has produced only a part of the Charterparty, therefore, the same ought not to be considered.*

*Para- 8 : Without prejudice to the aforesaid, it is submitted that the alleged termination of the Charterparty is not in accordance with the terms of the Charterparty itself. Therefore, assuming for the sake of argument that MEDS was the bareboat Charterer, the termination being bad, MEDS would continue to be bareboat charterer. Thus, arrest of the bareboat chartered vessel is permissible and the present arrest is justified.*

*Para-10: The Plaintiff reiterates that the vessel M.V. Altus Uber and the Defendant vessel are both owned by MEDS and therefore, they are*

*'sister vessels'. The Plaintiff reiterates that having supplied provisions to the vessel M.V. Altus Uber, at the instance of MEDS. Thus, the Plaintiff is entitled to arrest the Defendant vessel and maintain the present action under the provisions of Admiralty Act, 2017. In this regard, the Plaintiff had in its Plaint, placed reliance on the screenshot of website of MEDS showing both M.V. Altus Uber and the Defendant vessel under its ownership. Also, a copy of the Seaweb Report dated 30 May, 2018, evidencing the ownership of M.V. Altus Uber with MEDS, is produced herewith. Further, assuming without admitting existence and contents of the Charter Party, even then, the Plaintiff would be entitled to arrest the Defendant vessel and maintain the present action under the provisions of the Admiralty Act, 2017.*

*para-19: With reference to paragraph no. 4.3, it denied that the alleged Bareboat Charter Agreement was terminated by way of a written agreement on 12<sup>th</sup> December 2018. It is further denied that prior to the alleged termination, the owner of the Vessel Altus Sub-sea II has entered into a Memorandum of Agreement (MOA) dated 20.11.2018, with Opes Shipping Limited for the sale the Vessel. It is denied that pursuant to the same, Opes Shipping Ltd., U.K. Had deposited 20% amount or any other amount whatsoever for purchase of the defendant vessel. It is denied*

*that the Charter Party was terminated as alleged or at all. It is denied that on 28.11.2018, the Applicant registered mortgage on the vessel, for the deposit of 20% amount or any other sum whatsoever. It is denied that the Applicant further executed a MOA with a local ship Breakerat Alang, R.K. Industries on 1<sup>st</sup> December, 2018. Pertinently, the Applicant itself does not have title to the Vessel. Therefore, the aforesaid alleged sale transaction is bad in law and ought not to be considered. It is denied that the local ship breaker had opened a Letter of Credit in favour of the Applicant on 6.12.2018. The Applicant has failed to produce any document to support the aforesaid. It is denied that the Defendant vessel arrived at Alang Port. However, by order dated 7.12.2018, it was arrested in the present Suit. Therefore, the custody of the vessel being with the Court, no transfer would be permissible to alter the position of the rights and interest in the defendant vessel.*

*Para-21: With reference to paragraphs no. 4.4, it is denied that claim of the Plaintiff is for supply of Bunker to Vessel during the period when the ship was under the Bareboat Charter of MEDS. In fact the vessel MV Altus Uber and MV Altus Exertus have been owned by MEDS at all times. It is denied that the Plaintiff has made material suppression of fact that for the very said aspect, the claim for the*

supply of Bunker and alleged compensation fee. It is denied that MEDS is the bareboat charterer of the Defendant vessel. It is denied that the maritime claim is not maintainable after termination of the alleged Bareboat Charter Agreement. It is further denied that the suit is not maintainable under the eyes of law and that the order of deposit of amount is required to be withdrawn by dismissing the suit itself. It is denied that MOA is executed on 20<sup>th</sup> November 2018 by the cash buyer and that the ship was thereafter been brought at Alang pursuant to MOA executed between the local ship breaker and cash buyer on 1<sup>st</sup> December, 2018. It is denied that the ship was on onward journey for ship breacking purpose and not for navigation purpose. It is submitted that the Defendant Vessel was very much in navigable state and had all the means to ply. Without prejudice. In the alleged MOA, the parties had agreed that the Defendant Vessel will be delivered to the Applicant on her own power at the Intertidal Zone in Alang. Further, the Defendant Vessel was required to keep enough bunkers in the Defendant vessel for her beaching under the alleged MOA. In view of the same, the applicant cannot contend that the Defendant Vessel was not in a navigable state, the Applicant's pleadings are contrary to the purported documents annexed by them in support thereof. The Applicant is trying to mislead this Hon'ble Court, just because the Defendant Vessel came to Alang for

*demolition does not make the Defendant Vessel unnavigable.*

*Without prejudice to the above, in light of the provisions of the Admiralty Act, 2017, it is denied that once the ship is not navigable, then, it has to be treated as Chattel and the Admiralty Jurisdiction would not remain in existence. It is thus, denied that the suit is not maintainable on this court.*

*Para22: With respect to paragraph 4.5, it is denied that only the names of the ships M.V. Altus Exertus and M.V. Altus Uber are similar and that they are owned by different entities. The copy of the registration with the registering authority under the Republic of Siberia is denied. In this regard the Plaintiff places reliance on the screen shot of the website of MEDS showing that both MV Altus Uber and the Defendant vessel are owned by MEDS, as well as the Seaweb Report indicating that M.V.Altus Uber is owned by MEDS. A copy of the Seaweb Report dated 30<sup>th</sup> May, 2018 evidencing that the vessel M.V. Altus Uber is owned by MEDS, is produced herewith.*

*It is further denied that the basis of the Plaintiff's claim is misleading, incorrect and by showing incorrect details to this Hon'ble Court. It is denied that MEDS had taken*

*various vessels as bareboat charterers at the relevant time. It is denied that merely because MEDS are having various vessels under their bareboat charter, the same cannot be treated as both vessels are sister vessels. In fact, as aforesaid both M.V. Altus Uber and the Defendant vessel are owned by MEDS and are thus sister vessels.*

*The termination of the alleged bareboat charterparty is denied. Accordingly, it is denied that once after the termination of the Bareboat Charter Agreement with MEDS by the alleged owner of MV Altus Exertus and MV Altus Uber cannot be treated as sister ship. It is thus denied that provision provided to vessel M.V. Altus Uber cannot be treated as claim against the Defendant vessel."*

*(emphasis supplied)*

17. The aforesaid averments in the plaint of Suit, the written statement, Civil Application and its reply would clearly show that the learned counsel for the appellant was not fully justified in contending that there was an alternative plea in fact the entire tenure of the pleadings of the appellant and the reply to Civil Application if closely perused it would clearly emerge therefrom that the main emphasis for seeking of arrest of the defendant ship on the premise that the M/s. Altus Uber, the offending vessel was also owned by the owners of M/s. Altus Exertus, the defendant ship and both the owners were MEDS only. This premise and pleading were adhered to all along and there was no specific articulation qua adopting

any alternative plea that the defendant vessel at least was under the control of the owners of the offending ship by way of bareboat charterer. In fact, there cannot be any dispute qua the proposition of law as submitted by counsel for the appellant that alternative plea is not wholly debarred in a suit, but in the instant case the pleadings and the reply to the Civil Application for vacating the arrest order, if closely perused would clearly indicate that there was quite confusion with the appellant themselves qua the controlling owner or party of not only defendant ship but also the offending ship i.e. M/s Altus Uber. The decision cited at the bar for supporting the possibility and tenability of the alternative pleas therefore need not dwell upon at this stage suffice it to say that it was a duty cast upon the appellant to take a specific plea, be it the substantive plea or an alternative plea.

18. This brings the Court to consider the aspect of the applicability of sister-ship in the given facts and circumstances of the case. It has been elaborately discussed hereinabove that the arrest of a vessel is not end in itself as it is only for securing the claim amount. The arrested vessel is to ensure the security for the maritime claim. The maritime claim and arrest in rem would ultimately convert into the claim in personem against the owner or the controlling agency of the vessel which has offended or committed default. In the instant case, it was the say of the plaintiff that offending vessel was Altus Uber and not the present defendant vessel. The M./s Altus Uber was supplied provisions by the appellant and on that basis the appellant raised invoices and contended that the failure on the part of the then controlling agency MEDS failed in making good their obligation in terms of the payment for the supply. The



maritime claim arose against M/s. Altus Uber and their controlling agency MEDS who had time and again assure the appellants for payment while seeking extension of time for making the payment. The provision of section 5(1) and section 5(2) read together would surely permit the arrest of even the sister vessel provided the conditions mentioned thereunder or fulfilled. The plaintiff therefore were required to at least adduce prima facie documentary material and evidence to convince the Court that the defendant vessel i.e. M/s. Altus Exertus was also controlled by MEDS be as owner or as charterer. In the instant case, the documents supplied for even enabling the Court to initially form an opinion, were only screen-shots of the websites of MEDS in which also it has not been emerging that the MEDS were either charterer or owner of the ship in question. The availability of the ship as mentioned on the website screen-shot was pressed into service executing and perpetuating of arrest of the defendant vessel will have to be weighed against the material placed on record which had prima facie evidentiary value unless the same is rebutted, in the form of registration of ownership, registered, mortgaged produced by the respondent in proceedings of OJCA no.1 of 2019.

19. It is further require to be noted that the appellant cannot succeed in perpetuating the security deposit on this type of screen shots only, especially when the present respondent produced on record the conclusive proof of registration and ownership and mortgage etc. On the plea that the stage has not arisen before the Single Judge as the termination of the bareboat charterer itself was in dispute and therefore by dubbing it to be a matter of evidence to be

adduced and determined on full fledged trial would be perpetuating the hardship on the party which has prima facie establish its case by adducing the evidences and producing the documents.

20. This Court is also of the view that the arrest of the ship was ordered on 21.12.2018 and it is asserted all along and it had ended on 12.12.2018. This termination when not shown to be nonest in any manner the same could not have been brushed aside by the learned single judge and therefore it can well be said that the facts, date and chronology of the events it would clearly pointing out involving the provision of section 5(1) and 5 2 of the Admiralty Act, 2017.

21. This Court is of the considered view the appellant could not have justified that the termination of bareboat charter of Altus Exertus was disputed and the termination dated 12.12.2018 was not in consonance with the terms of the bareboat charterer and therefore the arrest could have been continued. In a given case, such a submission may weigh with the Court but when the party against whom the claim in personem could have been proceeded with has not been before the Court in any manner and when a party, who has approached the Court for vacating the relief, the Court prima facie records conclusive material in forms of documents indicating that the appellant's claim of MEDS being owner of both the ships and/or in alternative at least charterer at the given point of time was required to be established with equal efficacious material which would have inspired confidence of the Court in the claim of the plaintiff/appellant. It may be reiterated at the cost of repetition herein that the tenure of

the pleadings as they appear in the plaint of suit and the reply to the Civil Application no.1 of 2019 for vacating the stay order indicate that the opportunity available to the appellant plaintiff had not been availed by it, as except mere denial, there exists no other material for dislodging the same premise on which the arrest order was sought to be vacated by the respondent. In view of this, this Court need not go into other fine nuances of the rival contentions based upon the judgments and authorities cited at the bar. Suffice it to say that when the plaintiff appellant failed in dislodging the premise laid by the appellant in respect of the lack of control over both the ships by MEDS at the relevant point of time i.e. when the maritime claim arose in respect of M/s. Altus Uber and the arrest effected of M/s. Altus Exertus the defendant vessel. The Court need not therefore dwell further upon any other aspect, as the basic premise for effecting the arrest was not available as it was only a screen-shot of a website of the offending party MEDS and nothing else.

22. In view of the aforesaid discussions, the Court is of the considered view that when the plaintiff failed in establishing any claim against the owner and even a *prima facie case for* MEDS being in control of the vessel, the only contention that the termination of bareboat charter was under dispute without any other *prima facie* material or document would not cloth the plaintiff with entitlement to seek arrest of the ship when the otherside has produced registration of ownership and requisite document indicating termination of bareboat charter prior to the date of arrest.

23. In view of the aforesaid discussions and the factual aspects and the lack of *prima facie* case on the part of the appellant, this Court is of the view that the observations and decision of the learned single Judge does not call for any interference and as a result thereof the appeal being devoid of merits, deserves dismissal and hereby dismissed. The respondent would be entitled to receive deposit which is lying with the registry after furnishing appropriate proof of identity and registry is directed to pay the same by Account Payee Cheque or Demand Draft after due verification.

24. In view of the order passed in the main Appeal, Civil Application does not survive and stands disposed off accordingly.

**(S.R.BRAHMBHATT, J.)**

**(VIRESHKUMAR B. MAYANI, J.)**

**Further Order**

After the order was pronounced, learned counsel Shri Manav Mehta for Ms. Sheth, learned counsel for the appellant, requested the Court to stay this order and do not permit the otherside to withdraw the money which is deposited.

Mr. Bhatt, learned counsel for the respondent submitted that first of all let this be clarified that there is no stay granted by the Court and the money is lying in the deposit only on account of the statement made by the

respondent that they will not withdraw the money and therefore the money has not been withdrawn but that shall not be held out against the respondent in perpetuate the deposit.

The Court is of the view that the time for appeal deserves to be granted. In that view of the matter, Shri Bhatt once again submitted that, then in that case, the respondent would not withdraw the money till 18.02.2020. After that if no orders are passed the Registry would be at liberty to disburse the amount after due verification.

**(S.R.BRAHMBHATT, J.)**

**(VIRESHKUMAR B. MAYANI, J.)**

Pankaj

