



JUDGEMENTS DOSSIER ON ADMIRALTY AND SHIPPING LAWS

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Under the Guidance of
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High Court of Rajasthan



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Admiralty Jurisdiction

1 M.V. Elisabeth and Others v. Harwan Investment and Trading Pvt. Ltd., Hanoekar House, Swatontapeth, Vasco-De-Gama, Goa

1993 Supp (2) SCC 433

Constitution – jurisdiction – Colonial Courts of Admiralty (India) Act, 1891 and Constitution of India - appellant foreign ship arrested for acting in breach of duty by leaving port without bill of lading and delivering goods contrary to instructions of respondent assignor - appellant contended lack of jurisdiction of High Court - Division Bench of High Court upheld admiralty jurisdiction of High Court to take cognizance of matter - appeal - admiralty jurisdiction despite its peculiarities and origin part of totality of jurisdiction vested in High Court as Superior Court of record - once foreign ship arrested in Indian waters by Order of High Court proceedings must continue despite wherever cause of action had arisen - all foreign ships entering into India presumed to know that they fell in jurisdiction of India during their stay in India - owner of bill of lading not precluded from approaching Admiralty Court when foreign ship guilty of violation appeared in Indian waters - appeal dismissed.

2 World Tanker Carrier Corp. v. SNP Shipping Services Pvt. Ltd.

(1998) 5 SCC 310

Commercial - jurisdiction - Section 2 (2) of Merchant Shipping Act, 1958 - whether High Court have jurisdiction to try admiralty suit - under principles of public international law Court cannot entertain action against foreigners resident outside country or foreigners not carrying on business within country unless he submits to jurisdiction of Court here - presence of foreign vessels in territorial waters will not give Court jurisdiction to entertain limitation action by its owners unless presence of foreign vessels has given rise to admiralty action by claimant in that Court - Indian Parliament has no authority to legislate for foreign vessels or foreigners in them on high seas - unless foreign defendant either resides within jurisdiction or voluntarily appears or contracted to submit to jurisdiction of Court it is not possible to hold that Court have jurisdiction.

3 M.V. Al Quamar v. Tsavliris Salvage (International) Ltd.

(2000) 8 SCC 278

Commercial - agreement - foreign tourist who might have suffered money decree against another foreign tourist in England may not be able to execute his decrees in District Court at 'X' in India only because his judgment debtor who was mere tourist found to be in possession of some valuable property - as valuable property possessed by foreign judgment-debtor cannot give jurisdiction to District Court at 'X'.

Maritime claims: in rem & in personam jurisdiction

4 M.V. Elisabeth and Others v. Harwan Investment and Trading Pvt. Ltd., Hanoekar House, Swatontapeth, Vasco-De-Gama, Goa

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Constitution – jurisdiction – Colonial Courts of Admiralty (India) Act, 1891 and Constitution of India - appellant foreign ship arrested for acting in breach of duty by leaving port without bill of lading and delivering goods contrary to instructions of respondent assignor - appellant contended lack of jurisdiction of High Court - Division Bench of High Court upheld admiralty jurisdiction of High Court to take cognizance of matter - appeal - admiralty jurisdiction despite its peculiarities and origin part of totality of jurisdiction vested in High Court as Superior Court of record - once foreign ship arrested in Indian waters by Order of High Court proceedings must continue despite wherever cause of action had arisen - all foreign ships entering into India presumed to know that they fell in jurisdiction of India during their stay in India - owner of bill of lading not precluded from approaching Admiralty Court when foreign ship guilty of violation appeared in Indian waters - appeal dismissed.

5	Raj Shipping Agencies v. Barge Madhwa and Anr.	2019 SCC OnLine Bom 10595
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Civil -Judgment on admission -Application for -Order XII Rule 6 of Civil Procedure Code, 1908 (CPC) - Present application filed under Order XII Rule 6 of Code seeking judgment on admission of liability, based on defendant's communications acknowledging dues for supply of necessities and services to vessels -Whether plaintiff entitled to judgment on admission under Order XII Rule 6 of the Code based on the defendant's written acknowledgments of liability? -Held, defendant No.2 admitted liability of Rs.15, 04, 797 in writing - Counsel did not dispute admission, invoices, receipts or claim - Admission warrants decree under Order XII Rule 6 of Code - Invoices mention 18% interest for delayed payments, undisputed - Application allowed granting decree on admission - Defendants held jointly, severally liable - Sale proceeds of vessel to satisfy Plaintiff's claim - Defendant No.2 to pay remaining amount post-sale appropriation - Application allowed.

6	Angsley Investments Ltd. v. Jupiter Denizcilik Tasimacilik Mumessillik San.Ve Ticaret Ltd. Sirketi	2023 SCC OnLine Bom 559
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Civil - Recovery of money - Suit for - Present appeal filed impugned judgment and order thereby directing defendants to pay sum of US\$ 100,798 with interest at rate of 30% p.a. from date of institution of suit till payment and/or realization - Whether plaintiff is entitled to decree against Defendants for sum of US\$ 100,798 with interest at 30% per annum - Held, suit filed has only sought decree against defendant nos. 1 and 2 - Appellant was merely impleaded as party (defendant No. 3) - No decree was ever sought against appellant herein - Term "defendants" will not include appellant - No pleading making claim or alleging any cause of action against appellant - No decree could be granted against appellant - Impugned judgment and order quashed - Appeal allowed.

7	M.V. Sea Success I v. Liverpool and London Steamship P&I Association Ltd.	2001 SCC OnLine Bom 1019
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Civil - Maintainability of Suit - Section 5 of Admiralty Courts Act, 1861 and Order 7 Rule 11 of - Whether claim for unpaid insurance premia in respect of

ship amounts to necessary supplies within the meaning of Section 5 of Act constitute maritime claim? - Held, allegations made in plaint did not prove factum of Appellant no 1 Sea Success I being sister ship of vessels Sea Glory and Sea Ranger in respect of whom claim has been raised in suit - It cannot be overlooked that ship was valuable commercial chattel and her arrest prejudices third parties innocently as well as affect interest of owner - Therefore it was necessary to analyse plaint meaningfully to find out that it discloses cause of action or not and not on technical and formal reading that it discloses cause of action and wait for trial - There was not find any legal bar under Order 7 Rule 11 of CPC in rejected plaint against some of Appellants - Therefore plaint did not disclose cause of action against Appellant no 1 vessel and plaint in its entirety deserves to be rejected against Appellant no 1 - Claim towards unpaid insurance premium of maritime vessel was necessary as contemplated under section 5 of Act to constitute maritime claim - Consequently question answered in affirmative and appeal maintainable.

8 Epoch Enterrepots v. M.V. Won Fu

(2003) 1 SCC 305

Contract - Suit for recovery of damages for breach of contract - Applicability of the concept of maritime lien on the basis of fixture note - Plaintiff entered into an agreement with a mining company at Taiwan to export Feldspar and to complete the agreement, entered into an agreement with defendant's ship deponent owner to export the cargo from Tuticorin harbour to Taiwan, stated to be evidenced in fixture note - Defendant's ship failed to act in terms of the fixture note by reason therefore the plaintiff failed to send the cargo to the purchaser - Plaintiff filed a suit under admiralty jurisdiction in rem in Madras High Court for recovery of damages arising from the failure to export the consignment - Suit contested without disclosing the ownership of the respondent vessel - deponent owner was not a demise charterer but it is on the happening of such an event in future that such a fixture note has been issued - No sufficient evidence available as regards the action in rem making the vessel liable in the contract said to have been entered into, as recorded in fixture note - It is in the nature of a breach of contract and liability of the vessel would not arise - In as much as the claim arises out of contract de hors a maritime lien, no action in rem is permissible, rather a suit in the original jurisdiction of the Madras High Court can be maintained against the vessel.

9 Value Shipping Limited v. Owners and parties interested in the Vessel MV Nadhenu Purna

2024 SCC OnLine Mad 13298

Marine Laws -Security deposit - Submission of - Section 4 of Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 - Suit filed for recovery of suit claim after deduction received amount -Petitions filed to submit fixed deposits security of suit claim - Whether claim of plaintiff was a maritime claim falling under Section 4 of Act - Held, Plaintiff has also acquired jurisdiction to file suit before Court under admiralty jurisdiction - Extensions sought by owners of vessel would demonstrated failure on part of owners of vessel to deliver vessel to Plaintiff within stipulated time - Plaintiff had also granted extensions - However despite same owners of vessel had sought for further extensions - Plaintiff has ultimately cancelled contract - Force majeure clause was not available in contract and it was available only in escrow agreement - Interest and legal costs along with principal amount has also got to be treated as maritime claim - Claim of Plaintiff was maritime claim falling under Section 4 of Act - Owners of vessel have committed breach of contract - Owners of vessel were required to furnish security - On complying with conditions within stipulated date vessel was ordered to be released from arrest - Petitions disposed of.

10 M.V. Lima V and 2 Ors. v. Coastal Marine Construction and Engineering Ltd.

**Unreported HC Bombay
I.A.No. 105 of 2022 in
COMAS 82 of 2021**

Marine laws - Admiralty arrest - Security for release of vessel - Sections 1(2), 5 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 - Suit for refund of hire charges and recovery of expenses incurred for hiring tugs - Vessel hired as a self-propelled barge under purchase order - Delivery of vessel delayed by 37 days - Even after delivery, vessel allegedly not fully operational and unable to propel itself - Plaintiff claimed refund of hire charges on the basis that vessel was on downtime and also claimed expenses incurred for hiring tugs to make vessel operational - Defendants contended that vessel was an inland vessel registered under the Inland Vessels Act, 1917 and therefore beyond admiralty jurisdiction, and that claim for refund of hire charges was untenable since plaintiff had utilized the vessel and even sought extension of the contract - Held, mere registration of vessel under the Inland Vessels Act, 1917 was not determinative; the crucial

test was whether the vessel ordinarily plied on inland waters - Defendants failed to produce sufficient material to establish with certainty that the vessel ordinarily plied on inland waters - Issue whether the vessel was an inland vessel was, therefore, triable - As regards merits, correspondence and contractual clauses showed prima facie that the vessel was not in a position to perform as a self-propelled barge and that hiring of tugs was a mitigating measure - However, plaintiff could not simultaneously claim refund of hire charges and the expenses incurred for making the vessel operational, since the remedy in damages was to place the plaintiff, as far as possible, in the same position as if the contract had been performed - Claim for refund of hire charges was, prima facie, not sustainable - Security directed to be scaled down to Rs.76,50,303/- with interest @ 9% p.a. from the date of suit - Application partly allowed; arrest order modified accordingly.

11 MV Golden Pride v. GAC Shipping Pvt. Ltd. and Ors

2023 SCC OnLine Bom 967

Marine laws - Admiralty jurisdiction - Maritime claim - Sections 4(1)(l), 4(1)(n) and 4(1)(p) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 - Agent of vessel filed admiralty suit seeking indemnity against owner for port dues payable in respect of vessel, on the basis that agent had rendered services to vessel, had undertaken to pay port dues and reasonably apprehended exposure to port's claim - Vessel arrested and later sold in auction; part of security amount also directed to be released to Mumbai Port Trust - Whether an indemnity claim of the agent against owner in respect of port dues constituted a maritime claim and whether action in rem was maintainable - Held, expressions "arising out of" and "in connection with" in Section 4 are of widest amplitude and include even an indemnity claim where the subject matter itself is a maritime claim - Claim for services rendered to the vessel for its operation, dues in connection with port and disbursements incurred on behalf of the vessel/owners are not to be given a narrow construction - An indemnified party may sue once absolute liability is incurred; pre-payment is not essential - Claim of the agent fell within clauses (l), (n) and (p) of Section 4(1) and was a maritime claim - Action in rem was maintainable - No interference called for with direction permitting Mumbai Port Trust to withdraw part of the deposited security, especially in view of appellant's admissions and the Supreme Court's order - Appeals dismissed with costs; interim applications disposed.

Privity of Contract

12 **Raj Shipping Agencies v. M.V. Bunga Mas Tiga and Anr.**

2001 SCC OnLine Bom 325

Commercial - liability - Sections 5 and 6 of Admiralty Act, 1861 - action in rem is devised by Court to overcome difficulty of personal service on owner of vessel - for that purpose vessel itself is treated as person - liability of owner of vessel can be enforced against vessel itself - even for maritime lien there has to be enforceable rights in plaintiffs against owner of vessel - such right is enforceable against vessel - existence of right in plaintiffs against owner of vessel is must - supply of necessity would not make owner of vessel liable to pay price of supply - plaintiffs have to prove that supplies were made at instance of either owner of vessel or person authorised by owner of vessel.

Bunker Supply

13 **Chemoil Adani Pvt. Ltd. v. M.V Hansa Sonderburg And Others**

2010 SCC OnLine Bom 647

Civil - Maritime Claims - Dispute as to supply of bunkers - Order of Arrest - Application for vacating Order of Arrest - Application decreed by Trial Court at interlocutory stage for want of specific contract - Challenge thereto - Held, if there is no serious dispute about the proposition that supply of bunkers gives rise to maritime claim and there is a maritime claim, then, Order of arrest could not have been vacated for want of privity of contract or specific contract. The arrest could not have been vacated merely because in the opinion of the learned Judge, there is absence of specific agreement between the Appellant and Respondent Nos. 1 and 2. Further, whether the clauses in the said charter party would displace those in the agreement between the Appellant and Respondent No. 3 and therefore, absolve Respondent Nos. 1 and 2 from the liability to make payment for the supplies are matters of appreciation of evidence and not to be decided at an interlocutory stage (Ratio in Crescent Petroleum Ltd. v. M.V. Monchegorsk and Anr. applied). Thus, the Appeal succeeds, the Order of the learned Single Judge dated 17th March 2010 in the notice of motion is set aside.

Beneficial Ownership

14 **Polygreen International DMCC v. MT Pamboor 2 & Anr**

2022 SCC OnLine Bom 1704

Marine Laws - Order of Vessel Arrest - Vacation thereof sought - Section 4(1)(I) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act 2017 (Admiralty Act) - Defendants directed to provide security to ply on concerned territorial waters while order of arrest effective - Appeal preferred - Whether impugned order sustainable when full security directed to be furnished and arrest to continue? - Held, impugned ad-interim order by consent, quashed and set aside - no case made out for an arrest - Entire case built on conjecture and surmise - Defendants' Interim Application succeeded - Order of arrest vacated forthwith - Appeal and the Interim Application disposed of as directed.

15 **Siva Bulk Ltd. v. M.V. Aodabao**

2016 SCC OnLine Bom 3539

Civil - Order of Arrest - Challenge thereof - Notice of motion was filed to set aside order of arrest of Defendant No. 1 - Whether order of arrest on basis of evidences could be justified - Held, no credible evidence led which could establish that alleged shipping company was beneficial owner of Defendant No. 1 - Defendant No. 1 had produced direct primary evidence in regard to ownership of Defendant vessel and shareholders of registered owner of Defendant No. 1's vessel - Well settled that Plaintiff who approaches Court should succeed on strength of its own case rather than weakness of Defendant's case - Plaintiffs could not on basis of material produced by it which was doubtful, require Defendant No. 1 to furnish security for Plaintiffs' claim in suit - Court could not maintain arrest of 1st Defendant on basis of surmise, bald allegation, conflicting evidence which compound confusion - Therefore, arresting order of Defendant No. 1 was set aside - Notice of motion disposed off.

16 M.T. Hartati (M/s. Universal Marine & Anr) v. M.T. Hartati

2014 SCC OnLine Bom 223

Company - Arrest of vessel - Maintainability of - Present application filed for challenging order of arrest of Applicant's vessel and retention of security furnished for release of Applicant's vessel - Whether order of arrest and retention of security was justified - Held, fact that arrest order was obtained on basis that all vessels were owned by Applicant - Materials on record that Respondent had deliberately made false statement that all vessels were owned by Applicant and obtained order of arrest on basis of false averments in plaint - Submission of Respondent that concept of beneficial owner by itself required lifting of corporate veil was not sustainable - Respondent failed to prove that Appellant companies were nothing but sham to defraud him - Therefore, order of arrest or retention of security furnished for release could not be sustained - Application allowed.

17 Sunil B. Naik v. Geowave Commander

(2018) 5 SCC 505

Marine Laws - Damages - Jurisdiction - Suit filed claiming damages for wrongful arrest of vessel - Whether Court ceases to have jurisdiction on account of arrest of Defendant No. 1 vessel was set aside - Held, ex parte order of arrest of Defendant No. 1 was granted based on averments made in plaint that Defendant No. 1 was a sister ship of Defendant No. 2 and common owner was COSCO - Order of arrest required to be sustained in order for Plaintiff's suit to proceed to trial - If it was not sustained but vacated then suit becomes infructuous and comes to an end and could not be proceeded - Recall of order of arrest on ground that vessel was not a sister ship was itself sufficient for dismissal of suit since Court would have no jurisdiction to proceed against Defendant No. 1 vessel - Order of arrest was vacated on ground that Plaintiff failed in establishing that Beneficial Owner of Defendant No. 1 Vessel and Defendant No. 2 was COSCO - It was jurisdictional requirement that vessel must be a sister ship which Plaintiff failed to satisfy - Plaintiff failed to make out a prima facie case that they have suffered a loss or on quantum - Suit dismissed.

18 Kimiya Shipping Inc v. M.V. Western Light

2014 SCC OnLine Bom 257

Civil - Return of security - Entitlement for - Present notice of motion filed for return of security, which furnished to Plaintiff for not commencing arbitration case against Applicant - Whether Applicant was entitled for return of security - Held, undisputable fact that Applicant furnished security to mitigate loss that it would suffer by reserving its right to challenge demand for security - Duty was on Plaintiff to show that it was sincere and its intentions were not dubious while giving undertaking for not commencing arbitration case - However, Plaintiff had commenced arbitration case - Therefore, Plaintiff was directed to return security to Applicant - Notice of motion allowed.

19 Great Pacific Navigation Holdings v. M.V. Tongli Yantai

2014 SCC OnLine Bom 71

Marine Laws - Release of ship - Appellant challenged order of Single Judge of this Court raising arrest of Respondent-ship, in Notice of Motion taken out by Respondent for such relief - Held, change of ownership of a ship prior to contract between parties had never been frowned upon by Courts - If Appellant was to obtain an arbitral award, it would seek to enforce that award not only against Tongli Samoa as judgment debtor but against all properties of sister concern of Tongli Samoa, puppet company which could not individually settled its own business - Then Appellant, upon facts of case, would legitimately arrest Respondent ship as other ship beneficially owned by Tongli China, sister company which in fact beneficially owned Nasco Diamond for satisfaction of claim of Tongli Samoa - Appellant had only sought to secure its award by a timely arrest before ship was "spirited away" by its sale, disposition or alienation by the WWD in name of Tongli China pending arbitration - In a Suit in rem, owner of ship need not be sued and all parties, if materially affected by an order of Admiralty Court, might seek to intervene - Trial Judge fell in error only with regard to application of doctrine of lifting veil of incorporation to see various entities aside from Respondent and appreciate ultimate beneficial ownership of the Respondent-vessel - No error in order of Single Judge accepting convention of 1999 as applicable to parties under jurisdiction of this Court as also acceptance of claim for securing arbitral award by arrest of ship in beneficial ownership of sister company- Appeal No. 559 of 2011 was allowed and cross-

objections thereof were disallowed - Arrest of Respondent-ship should continue pending Suit and impugned order directing its release was set aside.

Arbitration & Admiralty

20 Siem Offshore Rederi AS v. Altus Uber

**2018 SCC OnLine
Bom 17075**

Civil - Maritime - Arrest of vessel - Present notice of motion is taken out (by MEDS) on behalf of defendant vessel for setting aside order of arrest dated and releasing the defendant vessel from arrest - Whether facts and circumstances of present case merits release of defendant vessel from arrest - Held, test stipulated under the statute is whether the Court has reason to believe - Materials on record is sufficient to demonstrate prima facie that MEDS are the owners of vessel in question - They denied being owners of vessel but admitted that they are the demise Charterers of vessel - Plaintiff is entitled to arrest defendant vessel even if MEDS is the demise Charterer of vessel - Vessel in question is liable to be arrested for the purpose of providing security in respect of maritime claim of plaintiff - Court had sufficient reasons to believe that claims of plaintiff are bonafide - No case has been made out for vacating the order of arrest - Notice of motion dismissed.

21 Altus Uber v. Siem Offshore Rederi AS

**2019 SCC OnLine
Bom 1327**

Marine Laws - Validity of Order - Appellant challenged order passed by single judge whereby single judge dismissed Notice of Motion with costs quantified as rupees five lakhs - Whether Appellant entitled for relief on ground that finding given by single judge was perverse and suffered from legal infirmity - Held, it appeared from record that finding of fact given by single judge was based on all materials produced and could hardly be termed as approval of one-sided version of Respondent - Single judge had applied his mind while recording finding on court's jurisdiction against Appellant - Thus, court was of view that criticism that single judge accepted

one sided version of Respondent was totally uncalled for - Finding given by single judge was neither vitiated by perversity nor by such legal infirmity as would warrant court interference in appellate jurisdiction - Criticism, therefore, apart from being uncalled for, was grossly unfair to single Judge - Appreciation and appraisal of factual materials was carried out by applying correct legal principles and in overall manner - Thus, court did not find any merit in either appeals - Both appeal liable to be dismissed - However in court view this was not fit case to impose costs - That part of order of single Judge, namely, imposing costs, was therefore, set aside - Both appeal dismissed.

22 Owners and Persons Interested in the Vessel, MT Titan Vision v. 3F Industries Ltd.

2013 SCC OnLine Mad 3825

Arbitration - Referral of matter - Present application filed by Defendant praying to refer dispute raised in suit to arbitration in terms of arbitration clause as contained in charter party and bills of lading - Whether matter in could be referred for arbitration - Held, it was specific case of Plaintiff that because of delay in delivery of cargo, they have suffered heavy loss, which will fell within purview of maritime claim - Defendant had also failed to produce any contractual provision as being arbitration agreement that was binding upon parties - Claim had been made by Plaintiff only as against vessel of Defendant - In event of owner of vessel obtains release of vessel by depositing security, action in rem would be converted into action in personam - There was maritime claim as against Defendant by Plaintiff, interim order of arrest of vessel could not be interfered with - Question of referring matter to arbitration did not arise at this stage - Application dismissed.

23 Steel Authority of India Ltd. v. Pacific Gulf Shipping Co. Ltd.

2013 SCC OnLine Bom 1238

Arbitration - Dismissal of petition - Whether arbitration petition under Section 34 of Arbitration and Conciliation Act, 1996 (the Act) had rightly been dismissed - Held, it was found that Section 31(7)(a) of the Act confers discretion upon arbitral Tribunal, where award is for payment of money, to award interest unless otherwise agreed by parties at such rate as it deems reasonable - No reason was found or justification to accept submission that

since award was in foreign currency, arbitral Tribunal ought to have awarded no more than LIBOR rate - LIBOR does not circumscribe discretion of Tribunal - Appeal dismissed.

24 Rushab Ship International LLC v. The Bunkers

2014 SCC OnLine Bom 620

Civil - Claim for damages - Present application filed for challenging claim for damages claimed by Defendant - Whether submissions of Plaintiff that claim for damages by Defendant was premature was maintainable - Held, mere fact that dispute between parties falls within scope of arbitration agreement entered into between them did not by itself preclude one of them from bringing action in High Court and procure arrest of ship or otherwise proceed with action - Mere existence of arbitration agreement would not by itself prevent party from filing suit and in case of action in rem, procuring arrest of ship or otherwise proceeding with action - But, if such action was taken, other party might apply for stay of proceedings and the Court was bound to grant stay Court's jurisdiction to arrest ship in an action - Purpose of exercise of jurisdiction was to provide security in respect of action in rem, and not to provide security in some other proceedings like arbitration proceeding - Submissions of Plaintiff that claim for damages by Defendant was premature was incorrect - Plaintiff rejected.

25 Destel Marine Limited v. M V Star 7

2011 SCC OnLine Guj 1

Civil - Maritime - Arrest of vessel - Present notice of motion is taken out (by MEDS) on behalf of defendant vessel for setting aside order of arrest dated and releasing the defendant vessel from arrest - Whether facts and circumstances of present case merits release of defendant vessel from arrest - Held, test stipulated under the statute is whether the Court has reason to believe - Materials on record is sufficient to demonstrate prima facie that MEDS are the owners of vessel in question - They denied being owners of vessel but admitted that they are the demise Charterers of vessel - Plaintiff is entitled to arrest defendant vessel even if MEDS is the demise Charterer of vessel - Vessel in question is liable to be arrested for the purpose of providing security in respect of maritime claim of plaintiff - Court had sufficient reasons to believe that claims of plaintiff are bonafide - No case has been made out for vacating the order of arrest - Notice of motion dismissed.

Caveats

26 OSV Crest Mercury 1 v. Vision Projects Technologies Pvt. Ltd.

2024 SCC OnLine Bom 1271

Civil - Arrest of vessel - Order of - Section 5 of Admiralty Act, 2017 - Present appeal filed to challenge order which rejected interim application filed by original defendant, seeking unconditional release of order of arrest - Whether order under challenge need interference - Held, to obtain order of arrest in Admiralty proceedings, plaintiff must demonstrate maritime claim against vessel's owner and show that vessel is within court's jurisdiction, as per Section 5 of Admiralty Act, 2017 - Unlike CPC provisions, urgency isn't factor; arrest in Admiralty claims serves as "sequestration", detaining vessel to address claim - It's not akin to CPC attachment - Every maritime claimant has right in rem, contingent on proving claim and vessel identity - In contrast, attachment before judgment is discretionary interim order under CPC, not right - In this case, vessel's control by owners makes irrelevant argument about importation formalities - Possibility of vessels escaping arrest after orders underscores importance of timely action - Absence of false urgency is affirmed by Single Judge's analysis in impugned order, which remains unchallenged and valid - Appeal dismissed.

27 Wizdoms Naik International Limited v. DSV Gerimal

Unreported HC Bombay - Judges Order (L) No.115 of 2018 in Commercial Admiralty Suit (L) No.21 of 2018

Maritime law — Admiralty arrest — Vacating arrest — Alleged suppression of material facts — Time charter party — Redelivery clause — Security. The Bombay High Court held that the plaintiff had made out a prima facie maritime claim and that there was no material suppression warranting vacatur of the arrest of the defendant-vessel. The Court found that the plaintiff had disclosed material correspondence showing post-expiry negotiations for a fresh charter, so the arrest order dated 8 June 2018 could not be vacated on the ground of non-disclosure. It also held that the defendant's admitted pre-5 June 2017 hire liability of USD 5, 39,698.65

remained enforceable. On the larger claim, the Court held that the charter party expressly required redelivery of the vessel at the UAE port and provided that the vessel would remain on-hire until redelivery free of charterers' men and material; therefore, the plaintiff was prima facie entitled to post-expiry hire from 19 June 2017 to 20 October 2017, quantified at USD 13, 02,000 after accounting for the 13-day free redelivery period. The Court rejected reliance on *The Rijn* because that case concerned different facts and did not displace the express contractual terms here. The defendant's alternative request to permit the arrested vessel to sail within territorial waters and Bombay High was rejected for lack of foundation regarding the vessel's class, dry-dock status, condition, hull and machinery, and P&I cover. The Court also declined to grant damages for wrongful arrest or security for costs, and fixed security for release of the vessel at USD 19,85,148 (rounded off) if the plaintiff sought release.

Bills of Lading

28 British India Steam Navigation Co Ltd v. Shanmughavilas Cashew Industries

1990 (3) SCC 481

Carriage of Goods by Sea – Bills of Lading – Contract of Affreightment – Exclusive Jurisdiction Clause – Choice of Law – Charterparty – Rights and liabilities of consignee – Whether consignee is bound by jurisdiction and choice of law clauses contained in the bill of lading – Whether charterer could escape liability under the agency clause in the bill of lading – Held, a bill of lading is evidence of the contract of affreightment and is intended to regulate the rights and liabilities arising out of that contract. A consignee or endorsee claiming under the bill of lading acquires only such rights and liabilities as the consignor possessed and is ordinarily bound by the terms of the bill, including the exclusive jurisdiction and choice of law clauses. Parties to an international commercial contract are free to choose the governing law and forum, and such choice is enforceable unless displaced by compelling reasons. A mere appearance before a court to object to jurisdiction does not amount to submission; however, failure to pursue the jurisdictional objection at the appellate stage amounts to waiver or submission to the jurisdiction in the facts of the case. The bill of lading is not itself the contract of affreightment but merely evidences its terms, and where a charterparty exists, its terms govern only if specifically incorporated

into the bill of lading. To determine the liability of a charterer, the nature of the charterparty—whether by demise, voyage charter or time charter—and the relationship between the shipowner and charterer must be examined. The courts below erred in disregarding the contractual clauses and in applying the Indian Carriage of Goods by Sea Act, 1925, which was inapplicable as the goods were shipped from a foreign port. The judgments of the courts below were set aside and the matter remanded to the trial court for fresh disposal after permitting amendment of pleadings and additional evidence.

29 Chairman, Board Of Trustees, C.P.T. v. M/S Arebee Star Maritime Agen. Pvt. Ltd

2018 SCC Online SC 195

Major Port Trusts – Ground Rent – Demurrage – Liability of Steamer Agent – Liability of Consignee – Major Port Trusts Act, 1963 – Sections 2(o), 42, 59, 60, 61 and 62 – Whether a steamer agent or consignee is liable to pay ground rent and demurrage in respect of uncleared cargo and containers lying in the port – Whether the Port Trust can recover ground rent from steamer agents beyond the period prescribed by the Tariff Authority for Major Ports (TAMP) – Held, the statutory scheme and earlier decisions of the Supreme Court disclosed inconsistent views regarding the liability of the steamer agent and the consignee for payment of port charges, demurrage and ground rent. Divergent opinions existed on the interpretation of the expression "owner" under Section 2(o), the relevance of the transfer of title under the Bills of Lading Act, the existence of a bailor-bailee relationship between the Port Trust, steamer agent and consignee, and the stage at which the liability of the steamer agent ceases. In view of these conflicting authorities, including Trustees of the Port of Madras v. K.P.V. Sheik Mohamed Rowther, Board of Trustees of the Port of Bombay v. Sriyaneesh Knitters, Forbes Forbes Campbell & Co. Ltd. v. Board of Trustees, Port of Bombay and Rasiklal Kantilal & Co. v. Board of Trustees of Port of Bombay, the issues required authoritative determination by a larger Bench. Accordingly, the matter was referred to a larger Bench to determine the principles governing liability for payment of ground rent, demurrage and other port charges, the effect of endorsement of the bill of lading or issuance of the delivery order, the extent of liability of the steamer agent, and whether the Port Trust is under any statutory or contractual obligation to de-stuff containers and return the empty containers to the shipping agent.

30 Global Integrated Bulkiers Pte. Ltd. v. Cargo of 14,072.337 MTS of Limestone and Ors

2018 SCC OnLine Bom 86

Civil - Warrant of arrest - Jurisdiction - Order of Trial Court filed praying for arrest of Defendant No. 1 and for order that in event of Defendant No. 1 depositing suit amount warrant of arrest should not be executed against Defendant No. 1 cargo - Whether Plaintiff could apply for arrest of Defendant No.1 cargo in respect of his claims - Held, Plaintiff was not a party to Bill of Lading - Claims against cargo made by Plaintiff were not connected with any other vessel - Claim of Plaintiff could not be considered as an action in rem against vessel - Since there was no maritime claim made by Plaintiff against vessel, admiralty jurisdiction of Court against Defendant No. 1 cargo could not be invoked for its purported maritime claim against cargo - Plaintiff being not a party to Bill of Lading could not claim any contractual lien against Defendant No. 1 cargo - Plaintiff has also not sent any reply to e-mail sent by port rejecting claim of Plaintiff for lien on Defendant No. 1 cargo - Plaintiff has not made out any case for arrest of Defendant No.1 cargo - Judge's Order dismissed.

31 Hindustan Fertilizer Corporation Ltd. v. Great Eastern Shipping Co. Ltd.

1997 SCC OnLine Del 493

Arbitration – Bill of Lading – Charter Party – Endorsement of Bill of Lading – Assignment – Arbitration Agreement – Territorial Jurisdiction – Whether an endorsement authorising delivery of cargo "on behalf of" the Government transferred title in the Bill of Lading so as to confer a right upon the endorsee to invoke the arbitration clause contained in the Charter Party – Whether the Delhi High Court had territorial jurisdiction to entertain the petition – Held, an endorsement merely authorising release of cargo "on behalf of" the Ministry of Chemicals and Fertilizers did not amount to an assignment of the Bill of Lading or transfer of title in the goods. The petitioner remained only an agent of a disclosed principal and, in the absence of a valid assignment under Section 130 of the Transfer of Property Act or transfer of rights under Section 1 of the Indian Bills of Lading Act, 1856, acquired no independent right to sue or invoke arbitration in its own name. Since the Charter Party was executed at Bombay, the cargo was loaded in the United States and discharged at Kakinada, and no part of the cause of action arose in Delhi merely because the endorsement was made there or the petitioner had its head office there, the Delhi High Court lacked

territorial jurisdiction. Consequently, the petitioner was neither entitled to seek reference of disputes to arbitration nor maintain the proceedings. Petition dismissed.

Limitation of liability

32 M V Nordlake Gmbh v. Union of India and Another

**Unreported HC
Bombay Notice of
Motion No. 41 of 2017
in Comm. Admiralty
Suit No. 14 of 2014**

Civil - Collision between ships - Losses and damages from - Present Notice of Motion filed for declaration that plaintiff is entitled to limit its liability in respect of all losses and damages in respect of all property claims and consequential losses resulting from collision between M.V. Nordlake and INS Vindhyagiri on 30 January 2011 at Mumbai Port in accordance with Part XA of Merchant Shipping Act, 1958 - Whether case made out to grant declaration as prayed - Held, plaintiff entitled to limit its liability in respect of all losses and damages in respect of all property claims and consequential losses resulting from collision between INS Vindhyagiri and M.V. Nordlake under Merchant Shipping Act, 1958 - Aggregate principal liability of plaintiff for all claims in respect of all losses and damages in respect of all property claims and consequential losses resulting from aforesaid collision shall be in sum of Special Drawing Rates (SDR) 27,89,234/- -SDR shall be converted to Indian Rupees at conversion rate as of date of this order - Principal sum shall carry interest @ 12.75% p.a. from 30 January 2011 till date of this order - Notice of motion allowed.

33 Saji Surendran v. Elsa 3 Maritime Inc.

**Unreported HC
Kerala I. A. NO.
67/2025 In ADML.S.
No. 14 of 2025**

Admiralty Law - Limitation of Liability - Maintainability of Suit - Section 352-C of the Merchant Shipping Act, 1958 - Present Admiralty Suit filed for constitution of a limitation fund under Section 352-C of the Merchant

Shipping Act, 1958, to limit liability arising from the sinking of a vessel - Whether the Admiralty Suit is maintainable, considering arguments that it lacks a proper cause of action, falls under the Commercial Courts Act, is barred by the absence of specific rules, and was improperly initiated as a suit rather than an application - Held, Section 352-C of the Merchant Shipping Act grants a substantive right to a shipowner to apply to the High Court for setting up a limitation fund when legal proceedings are instituted - A limitation action is a defensive action falling under the High Court's admiralty jurisdiction, as per Supreme Court precedent - The High Court having jurisdiction over admiralty actions against the vessel owner also has jurisdiction to set up a limitation fund - Section 352-C proceedings do not fall under the definition of 'commercial dispute' and are not to be filed before the Commercial Court - The substantive right conferred by Section 352-C cannot be defeated by the absence of specific rules - The Kerala High Court Admiralty Rules, 2019, define 'suit' broadly to include "any suit, any action, or any other proceedings instituted in the Court in its admiralty jurisdiction," thus encompassing Section 352-C proceedings - The Plaint discloses a cause of action for instituting the Section 352-C proceeding - The argument regarding the absence of a Section 80 CPC notice was rejected - Applications dismissed.

34 Murmansk Shipping Company v. Adani Power Rajasthan Ltd.

2016 SCC OnLine Bom 167

Marine law — Constitution of limitation fund — Maintainability — Res judicata/issue estoppel — Prior foreign proceeding treated as withdrawn — No bar under Section 11 CPC or Order 23 Rule 1 CPC — Suit maintainable. Merchant Shipping Act, 1958, ss. 352A, 352B, 352C — Limitation fund — Prior legal proceeding not a condition precedent — Ship-owner may seek constitution of fund even before third-party claim is filed. Ship-owner's right to limit liability — Absolute right under Part XA — Not defeated by proof of personal act or omission. Quantum of limitation fund — 1976 Convention as amended by 1996 Protocol applicable — "As amended from time to time" includes future amendments.

Subrogation

35 Fresenius Medical Care India Private Limited (and Fresenius Medical Care Dialysis Service India Private Limited) v. Kerry Indev Logistics Private Limited

2024 SCC OnLine Del 2552

Arbitration - Appointment of Arbitrator - Section 11(6) of the Arbitration & Conciliation Act, 1996 - Adjudication of disputes between the parties - Warehousing & Logistics Agreements - Fire Incident - Loss caused to Petitioner's stocks and assets - Respondent denied liability - Petitioner invoked arbitration seeking appointment of sole arbitrator - Respondent declined to consent - Hence the present petitions - Whether Arbitral Tribunal sought to be constituted could be permitted? - Held, Agreement executed nota simpliciter assignment of debt but subrogation favouring Insurance Company - Subrogation only entitles insurer to receive back amount paid to assured - In the present case, right retained by Insured to retain excess amount recovered - Agreement between the Petitioner and Insurance Company a subrogation-cum-assignment - Consequently no merit in the objection raised by Respondent - Petitions allowed appointing Sole Arbitrator to adjudicate claims and counter-claims (if any) - Question with regard to extinction of Petitioner's right to claim any amount from Respondent because they received settlement amount from the Insurance Company left open to be decided by Arbitral Tribunal, if so raised before it - Petitions allowed [18], [20], [23], [24], [26]

36 Economic Transport Organization, Delhi v. Charan Spinning Mills Private Limited And Another

(2010) 4 SCC 114

Consumer Protection - Insurance - Subrogation-cum-Assignment - Maintainability of Complaint - Section 2(1)(d) of the Consumer Protection Act, 1986; Section 9 of the Carriers Act, 1865 - Whether an insurer, after settling the insured's claim, could maintain a consumer complaint against the carrier on the basis of a letter of subrogation-cum-assignment - Held, a subrogation-cum-assignment does not amount to a mere assignment of a right to sue and remains a valid instrument enabling the insurer to prosecute proceedings in the name of, or jointly with, the insured. However, an insurer alone is not a "consumer" and cannot maintain a complaint in its

own name. The presumption of negligence under Section 9 of the Carriers Act applies to proceedings before Consumer Fora, shifting the burden to the carrier to disprove negligence once loss is established. The carrier having failed to rebut the presumption, the complaint was maintainable and the appeal was dismissed.

Collision

37 The Shipping Corporation of India Ltd. v. Nicholas John Richardson

2024 SCC OnLine Mad 5671

Civil - Admiralty Jurisdiction - Action in personam - Rejection of plaint - Revocation of leave to sue - Application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC) and Clause 12 of the Letters Patent - Present applications filed seeking rejection of the plaint for non-compliance with Section 12A of the Commercial Courts Act, 2015 and revocation of leave granted to institute an admiralty action in personam on the ground that the collision occurred beyond India's territorial waters and the Madras High Court lacked jurisdiction - Whether the plaint was liable to be rejected and the leave to sue revoked - Held, the declaration in Patil Automation Pvt. Ltd. v. Rakheja Engineers Pvt. Ltd. making pre-institution mediation under Section 12A of the Commercial Courts Act mandatory operates prospectively from 20 August 2022 and does not affect suits instituted prior thereto - Section 7 of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 does not independently confer admiralty jurisdiction but merely prescribes additional conditions for entertaining actions in personam arising from vessel collisions - Since part of the cause of action arose within the territorial jurisdiction of the Madras High Court through registration of the plaintiff's vessel, lodging of the FIR, investigation, assessment of loss and issuance of notices in Tamil Nadu, and the defendant carried on business in India, the statutory requirements under Section 7 were satisfied - The suit was maintainable before the Madras High Court - No ground existed either to reject the plaint or to revoke the leave granted to institute the suit - Both applications dismissed.

38 V.M. Salgaocar and Bro. Ltd. v. M.V. Priyamvadan and Anr.

2025 SCC OnLine Bom 2657

Admiralty suit — Ship collision — Negligence — Safe manning — Contributory negligence — Limitation of liability — Damages. The Bombay High Court held that MV Priyamvada was negligent in dragging anchor and colliding with MV Sanjeevani, primarily because the vessel was left under the command of an inexperienced second officer while the Master and Chief Officer were ashore, and the crew failed to take timely preventive action. The Court also held that MV Sanjeevani was not free from fault. Although the vessel had been refloated, it had been grounded for more than 10 months, had deficient equipment and communication systems, and its engines were not effectively used to arrest its drifting after the first contact. Applying the prevention-of-collision rules and the assessors' opinions, the Court apportioned liability equally and held that the plaintiff's own vessel contributed to the eventual grounding to the extent of 50% contributory negligence. On limitation of liability, the Court rejected the owner's plea under Section 352A of the Merchant Shipping Act, 1958, holding that the defendants failed to establish entitlement to limit liability and had not taken steps to constitute a limitation fund under Section 352C. On damages, the Court declined the plaintiff's claim for replacement value or insured value of the vessel, but held that reasonable compensation was payable. Since the vessel had been treated as beyond economic repair and ultimately scrapped, the Court assessed compensation on a scrap-value basis and decreed Rs. 1 crore with simple interest at 9% p.a. from the date of suit.

Duty of Disclosure

39 Dreyamoort Fertilizers Overseas Pte. Ltd. v. M.V. Theoforos-1

2014 SCC OnLine Bom 369

Admiralty – Arrest of Vessel – Maritime Claim – Bill of Lading – Maintainability of Suit – Whether a person who was neither the shipper, consignee, holder nor endorsee of the bill of lading could maintain an

admiralty action in rem and obtain arrest of the vessel for alleged short delivery of cargo – Held, a plaintiff lacking title, authority or a legally enforceable maritime claim under the bill of lading cannot maintain an action in rem or seek arrest of the vessel. Alternative claims based on negligence, bailment, assignment or restitution were unsustainable in the absence of ownership, possessory rights or a valid assignment. The ex parte arrest having been obtained by suppression of material facts was liable to be set aside, the security returned, and exemplary costs imposed.

Insolvency and Admiralty

40 **Raj Shipping Agencies v. Barge Madhwa and Anr.**

**2019 SCC OnLine
Bom 10595**

Civil -Judgment on admission -Application for -Order XII Rule 6 of Civil Procedure Code, 1908 (CPC) - Present application filed under Order XII Rule 6 of Code seeking judgment on admission of liability, based on defendant's communications acknowledging dues for supply of necessities and services to vessels -Whether plaintiff entitled to judgment on admission under Order XII Rule 6 of the Code based on the defendant's written acknowledgments of liability? -Held, defendant No.2 admitted liability of Rs.15,04,797 in writing - Counsel did not dispute admission, invoices, receipts or claim - Admission warrants decree under Order XII Rule 6 of Code - Invoices mention 18% interest for delayed payments, undisputed - Application allowed granting decree on admission - Defendants held jointly, severally liable - Sale proceeds of vessel to satisfy Plaintiff's claim - Defendant No.2 to pay remaining amount post-sale appropriation - Application allowed.

No Excessive Security

41 Shree LTC Agro Sales Ltd. v. Mediterranean Shipping Company, S.A.

2013 SCC OnLine Bom 852

Bills of lading — Rights of shipper — Bills of Lading Act, 1856, s. 1 — Maintainability of suit — Security in admiralty — Unliquidated damages. The Bombay High Court held that a shipper can maintain a suit on the bill of lading until the property in the goods has been transferred to and vested in the consignee or endorsee upon or by reason of such endorsement. Since whether such transfer had in fact occurred could only be decided at trial, the plaintiff could not be non-suited at the interim stage. The Court also held that in admiralty jurisdiction, security cannot be demanded on the basis of an exorbitant or unsupported claim. The arrest of a vessel is only a means to obtain security for a reasonably best arguable case, and the plaintiff must prima facie establish the claimed losses with documentary material. Applying that principle, the Court found that only the first head of claim, representing the alleged value of the cargo of Rs. 6, 07, 746, was prima facie supported. The remaining heads of claim for alleged consequential losses, packing material, and corrugated boxes were unsupported by material, appeared remote and indirect, and were not shown to be directly connected with the carriage under the suit bill of lading. Accordingly, the Court ordered reduction of the security furnished for release of M.V. MSC Highness V. 6R by excluding the amounts claimed under item Nos. 2, 3 and 4 of the particulars of claim. The suit was otherwise allowed to proceed, and the plaintiff was left free to prove all heads of claim at trial

42 Sangitadas and Ors. v. M.V. Amber and Ors.

2017 SCC OnLine Ker 41711

Admiralty jurisdiction - Security for release of vessel - Merchant Shipping Act, 1958, Sections 443 and 444 - Appeal against quantum of security fixed for release of arrested vessel - Plaintiffs, legal heirs of deceased fishermen, filed admiralty suits claiming compensation of Rs. 18.15 crores each for wrongful death caused by vessel M.V. Amber in Indian maritime waters - Single Judge ordered arrest of vessel and later permitted release on furnishing bank guarantee/demand draft of Rs. 1 crore each - Whether the

quantum of security was inadequate and whether entire plaint claim ought to have been secured - Held, the expression “damage caused by a ship” in Section 443 is to be construed broadly and includes maritime claims arising from loss of life - Admiralty Court’s power to arrest a ship and require security to release it flows from Section 443, the procedural jurisdiction under the Code of Civil Procedure, Section 151 CPC, and the principles of international conventions on arrest and release of ships - The Court has discretion to fix security at an amount different from the plaint claim, based on a prima facie assessment of the plaintiff’s reasonably arguable best case and not on an inflated or unrealistic claim - Since no material supported the assertion that the deceased earned Rs. 75,000 per month, and the claimed compensation of Rs. 18.15 crores was found to be excessive and unsupported, the security of Rs. 1 crore was held just and reasonable - Appeals dismissed; interlocutory applications closed.

Test for Arrest

43 **Videsh Sanchar Nigam Ltd. v. M.V Kapitan Kud And Others**

(1996) 7 SCC 127

Civil - admiralty - damage to international cable of appellant done due to anchoring of respondent vessel - respondent vessel was foreign vessel and if it left shores of Indian territorial waters it was difficult to get hold of it and it may not return to jurisdiction of Indian Courts - there was strong triable case - Court opined that vessel may be released on deposit of Rs. 10 crores and on furnishing of undertakings to satisfaction of High Court and it would give appropriate direction for releasing vessel in accordance with law.

44 **Dan Bunkering (Singapore) Pte Ltd v. MV Silvia Glory (IMO 9622942)**

Unreported- HC Gujarat Admiralty Suit No. 8 of 2019 Order dt. 21 Aug 2019

Admiralty suit — Settlement — Withdrawal of suit — Disbursement of security — Arrested vessel — Bunkers claim. The Gujarat High Court held that where the parties had amicably settled the dispute arising out of

bunker supply, the Admiralty Suit could be disposed of as withdrawn without going into the merits. The plaintiff had sued for recovery of an unpaid bunker invoice against MV Silvia Glory and had obtained arrest of the vessel. The vessel was later released against security of USD 415,105, and the parties subsequently entered into a written Settlement Agreement dated 9 June 2022. Under the settlement, the owner agreed to pay USD 35,000 to the plaintiff in full and final settlement of all claims arising out of the bunker supply, and the parties agreed to move joint applications for withdrawal of the suit and remittance of the security amount. The Court took the joint purshis and settlement agreement on record, permitted withdrawal of the suit, and directed the Registry to remit USD 35,000 to the plaintiff and the balance security amount with accrued interest to the owner's nominated account within two weeks. The connected civil applications were also disposed of accordingly, and permissible court fees were ordered to be refunded in the name of the plaintiff's advocate.

45 M/S. Kimderly-Clark Lever Pvt. Ltd. v. M.V. Eagle Excellence and Anr.

**Unreported HC
Bombay Appeal No.
240 OF 2007 in
Notice of Motion No.
2346 OF 2006 in
Admiralty Suit No.12
OF 2006**

Admiralty law — Ship arrest — Security for release — Suit for damages — Prima facie case required. The Bombay High Court held that in a suit for damages, an interim order directing security for a future decree should be granted only where the plaintiff establishes an extremely strong prima facie case. The plaintiff claimed that machinery entrusted to the defendant was damaged in transit and that substantial repair expenses, survey charges, insurance expenses, and loss of use had been incurred. The defendant sought release of the bank guarantee furnished for the vessel's release after an ex parte arrest. The Court found that the plaintiff had not produced adequate documentary evidence to support the claim, including no documents for the Rs.1 lakh insurance/survey claim and no reliable proof of the cost of replacement parts actually used in repair. The Court also noted

that the plaintiff had not shown that any joint survey was conducted or that tenders were invited to obtain the lowest repair quote. Relying on the principles of section 73 of the Contract Act, 1872, the Court held that damages for breach must be such as naturally arise in the usual course of things and cannot be based on remote or speculative loss. Mere affidavit evidence was held insufficient to establish damages in the absence of supporting material. Accordingly, the Court held that the plaintiffs had not even made out a prima facie case for damages and allowed the Notice of Motion in terms of prayer clause (b), directing release of the bank guarantee, though the release was to take place only after four weeks.

Types of Charterparties

46 Dan Bunkering Limited v. PFS Shipping India Limited

2018 SCC OnLine Bom 1313

The High Court of Bombay addressed the enforcement of a foreign judgment involving Dan Bunkering Limited and PFS Shipping India Limited. The core issue was whether the Danish Supreme Court's judgment, which upheld a Maritime and Commercial Court decision requiring PFS Shipping to pay Dan Bunkering for supplied bunkers, was enforceable in India under Section 13 of the Code of Civil Procedure, 1908. The court found the Danish judgment conclusive, as PFS Shipping failed to prove any exceptions under Section 13, such as duress or violation of Indian law. Consequently, the court ordered PFS Shipping to pay Dan Bunkering US\$ 163,089.65 with interest and costs, dismissing the defenses raised by PFS Shipping.

47 Sunil B. Naik v. Geowave Commander

(2018) 5 SCC 505

Marine Laws - Damages - Jurisdiction - Suit filed claiming damages for wrongful arrest of vessel - Whether Court ceases to have jurisdiction on account of arrest of Defendant No. 1 vessel was set aside - Held, ex parte order of arrest of Defendant No. 1 was granted based on averments made in

plaint that Defendant No. 1 was a sister ship of Defendant No. 2 and common owner was COSCO - Order of arrest required to be sustained in order for Plaintiff's suit to proceed to trial - If it was not sustained but vacated then suit becomes infructuous and comes to an end and could not be proceeded - Recall of order of arrest on ground that vessel was not a sister ship was itself sufficient for dismissal of suit since Court would have no jurisdiction to proceed against Defendant No. 1 vessel - Order of arrest was vacated on ground that Plaintiff failed in establishing that Beneficial Owner of Defendant No. 1 Vessel and Defendant No. 2 was COSCO - It was jurisdictional requirement that vessel must be a sister ship which Plaintiff failed to satisfy - Plaintiff failed to make out a prima facie case that they have suffered a loss or on quantum - Suit dismissed.

48 Larsen & Toubro Ltd. v. Girish Dave

**2022 SCC OnLine
Bom 414**

Direct Taxation - Payment of charter hire for tugs and barges - Nature of - Sections 9(1)(iv), 44BB, 195 and 264 of Income Tax Act, 1961 (ITA) - Present petition takes exception to order passed under Section 264 of ITA which rejected application by petitioner against order passed under Section 195 of ITA - Whether payment of charter hire for tugs and barges by petitioner falls within ambit of 'royalty' under Section 9(1)(iv) or is covered by special provision contained in Section 44BB of ITA - Held, petitioner entered into contract with ONGC on turn-key basis for enhancing exploration/production capacity of platform at Bassein field offshore site - For said purpose, petitioner hired tugs and barges from non-resident assesses - Authorities not justified in concluding that use of tugs and barges was in nature of mere transportation facility - Respondent no. 1 recorded that tugs were hired by petitioner to transport Compressor module from yard to offshore platform - Said compressor module, as it emerges from record, was integral part of execution of contract by petitioner - Hire of tugs and barges, to transport integral part of equipment to enhance exploration/production capacity, was inextricably connected with extraction and production of mineral oil - Payments made by petitioner to non-resident assesses in execution of contract with ONGC is properly assessable under provisions on Section 44BB of ITA - Impugned order quashed and set aside - Petition allowed.

49 Poompuhar Shipping Corporation Ltd. v. Income Tax Officer

2013 SCC OnLine Mad 3089

Income Tax – Royalty – Time charter agreements – Deduction of tax at source – Payment of charter hire to foreign shipping companies – Whether charter hire paid under time charter agreements constituted "royalty" under Section 9(1)(vi) of the Income Tax Act and Article 12 of the applicable Double Taxation Avoidance Agreements – Held, under a time charter agreement the owner retained possession, command and navigation of the vessel through the master and crew, while the charterer merely obtained transportation services and commercial use of the vessel's carrying capacity – There was no transfer of the use or right to use the ship as industrial, commercial or scientific equipment – Consequently, charter hire payments could not be characterised as royalty under Section 9(1)(vi) or the relevant DTAA's – Such receipts, if taxable, would fall for consideration as shipping or business income under the applicable treaty provisions and not as royalty – Therefore, the assessee was not liable to deduct tax at source on the footing that the payments constituted royalty and the orders passed under Sections 195, 201 and 201(1A) treating the assessee as in default could not be sustained.

Income Tax – Representative assessee – Foreign shipping companies – Section 163 – Proceedings initiated against Indian charterer as agent of foreign shipowners – Whether assessee could be assessed as representative assessee under Section 163 of the Income Tax Act – Held, once charter hire was held not to be royalty and the payments were made under time charter arrangements for transportation services, the very basis for treating the assessee as representative assessee disappeared – Tribunal was not justified in remanding the matter for initiation of proceedings under Sections 195 or 201 after holding that the assessee could not be assessed under Section 163 – Appeals filed by the assessee allowed and Revenue's appeals dismissed.

50 Georim Oil Corporation v. M.V. Flag Mersinidi and Ors.

2014 SCC OnLine Bom 479

The Marine Laws - Maritime lien - Present application filed to set aside/vacate order of arrest of said vessel and consequently for return of bank guarantee furnished as security towards Respondents-plaintiff's

claim - Whether Plaintiff had maritime lien on said vessel and entitled for bank guarantee - Held, no averment that Respondent-Plaintiff made any attempt to contact shipowner, i.e., Applicant-defendant so as to ascertain whether Defendant was authorised to purchase bunkers on their behalf - Not appeared in plaint that Applicant by its conduct or behaviour let Respondent indeed think that defendant was authorised by them to purchase bunkers on their behalf - Since there was no contract between defendant and plaintiff, choice of law provision in general terms and conditions of sale and delivery note entered into between plaintiff and defendant should not be given any weightage - Respondent-defendant was not liable in personam since judgment of District Court of South Korea was conclusive on said issue - Said Korean Court had accepted contentions that defendant was not liable for plaintiff's claim - In said circumstances, Plaintiff had not maritime lien on said vessel - Application disposed of.

51 Peninsula Petroleum Ltd v. Bunkers on board the vessel MV Geowave Commander

2014 SCC OnLine Bom 1895

Miscellaneous - Supply of bunkers - Recovery of claim - Present suit filed by Plaintiff for recovery of claim for supply of bunkers to Defendants - Whether Plaintiff was entitled for recovery of claim and obtaining warrant of arrest of Defendant vessel - Held, arrest of bunkers effectively results in arrest of ship although there was no claim against shipowner - Ship owner, who was third party, was seriously prejudiced and would suffer substantial loss - Interests of third party far outweigh interests of Plaintiff who was seeking to secure its claim against buyer of bunkers - It would provide appropriate undertakings to compensate ship owner for detention of its vessel - It was open to ship owner to recover charter hire from charterer for period vessel was detained due to order of arrest of bunkers - Customs permission would be required and special receiver of bunkers would had to be appointed for storage pending sale - Therefore, it clear that order of arrest of bunkers would face serious difficulties in enforcement in Ports in India - Suit disposed off.

52 The Great Eastern Shipping Co. Ltd. v. State Of Karnataka

(2020) 3 SCC 354

Sales Tax – Transfer of right to use goods – Time Charter Agreement – Tug vessel – Levy of sales tax under Section 5C of the Karnataka Sales Tax Act, 1957 – Whether a Time Charter Agreement amounted to transfer of the right to use goods within the meaning of Article 366(29A)(d) of the Constitution and Section 5C of the Karnataka Sales Tax Act – Held, a time charter is distinct from a bareboat/demise charter and is essentially a contract for rendering services – Under the charter agreement, ownership, possession and effective control of the tug remained with the owner, who continued to provide the master and crew, maintain, insure and operate the vessel, while the charterer merely obtained the benefit of the services rendered by the vessel for specified port operations – Mere use of expressions such as "let", "hire", "placed at the disposal of the charterer" or "under the control of the charterer" did not amount to transfer of the legal right to use the vessel – Since the essential attributes of transfer of the right to use goods, as laid down in BSNL v. Union of India, were absent, the transaction did not constitute a deemed sale exigible to sales tax under Section 5C of the Karnataka Sales Tax Act. Constitution of India – Territorial waters – Legislative competence – Karnataka Sales Tax Act – Whether the State of Karnataka was competent to levy sales tax in respect of a Time Charter Agreement relating to operations within territorial waters – Held, territorial waters form part of the territory of India and Parliament possesses paramount legislative competence in respect of maritime zones; however, where the taxable event is otherwise validly attracted within the State under the taxing statute, the mere fact that the vessel operates in territorial waters does not by itself invalidate the levy – Nevertheless, as the Time Charter Agreement did not amount to a transfer of the right to use goods, no liability to sales tax arose on the facts of the case – Appeal allowed.

53 Union of India v. Gosalia Shipping Private Ltd

1978 SCC Online SC 156

Income Tax – Profits of non-residents from occasional shipping business – Time Charter Party – Section 172 of the Income Tax Act, 1961 – Levy of tax on amounts paid "on account of the carriage of goods" – Whether hire charges paid by a time charterer to the owner of a vessel constituted amounts paid

on account of the carriage of goods within the meaning of Section 172(2) – Held, under a time charter party the charterer paid consideration for the use and hire of the vessel and not for the carriage of goods – The hire was payable irrespective of whether the vessel actually carried goods or whether it was put to any use – The fact that the charterer loaded its own cargo on the vessel did not alter the character of the payment or convert hire charges into freight or consideration for carriage of goods – Section 172(2) applies only to amounts paid or payable on account of the carriage of goods, passengers, livestock or mail and not to payments made merely for the use and hire of a vessel – Consequently, the demand of income tax raised under Section 172 against the shipping agent of the non-resident charterer was unsustainable and was rightly quashed. Appeal dismissed.

54 Ispat Industries Ltd. v. Shipping Corporation of India Ltd

2009 SCC OnLine Bom 1668

Arbitration – Contract of Affreightment (COA) – Demurrage – Disablement of vessel's cranes – Scope of interference under Section 34 of the Arbitration and Conciliation Act, 1996 – Challenge to arbitral award directing charterer to pay demurrage, unpaid freight and interest under a Contract of Affreightment – Whether the arbitral award suffered from patent illegality or perversity warranting interference under Section 34 – Held, the arbitral tribunal had considered the contractual terms, documentary evidence and rival contentions before concluding that the charterer had wrongfully repudiated the COA and was liable to pay demurrage and the balance freight – The interpretation placed by the arbitrator on the contractual clauses relating to discharge rate, availability of cranes and laytime was a plausible interpretation arising from the contract and evidence on record – Reappreciation of evidence or substitution of the Court's own interpretation of the contract was impermissible in proceedings under Section 34 – An arbitral award can be interfered with only where it is contrary to the substantive law, the provisions of the Arbitration and Conciliation Act, 1996, the terms of the contract, or is patently illegal or opposed to the public policy of India – Since none of these grounds were established, the award did not warrant interference – Arbitration Petition dismissed.

Piercing of Corporate Veil

55 Polygreen International DMCC v. MT Pamboor 2 & Anr

2022 SCC OnLine Bom 1704

Marine Laws - Order of Vessel Arrest - Vacation thereof sought - Section 4(1)(I) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act 2017 (Admiralty Act) - Defendants directed to provide security to ply on concerned territorial waters while order of arrest effective - Appeal preferred - Whether impugned order sustainable when full security directed to be furnished and arrest to continue? - Held, impugned ad-interim order by consent, quashed and set aside - no case made out for an arrest - Entire case built on conjecture and surmise - Defendants' Interim Application succeeded - Order of arrest vacated forthwith - Appeal and the Interim Application disposed of as directed.

56 Siva Bulk Ltd. v. M.V. Aodabao

2016 SCC OnLine Bom 3539

Civil - Order of Arrest - Challenge thereof - Notice of motion was filed to set aside order of arrest of Defendant No.1 - Whether order of arrest on basis of evidences could be justified - Held, no credible evidence led which could establish that alleged shipping company was beneficial owner of Defendant No.1 - Defendant No.1 had produced direct primary evidence in regard to ownership of Defendant vessel and shareholders of registered owner of Defendant No. 1's vessel - Well settled that Plaintiff who approaches Court should succeed on strength of its own case rather than weakness of Defendant's case - Plaintiffs could not on basis of material produced by it which was doubtful, require Defendant No. 1 to furnish security for Plaintiffs' claim in suit - Court could not maintain arrest of 1st Defendant on basis of surmise, bald allegation, conflicting evidence which compound confusion - Therefore, arresting order of Defendant No.1 was set aside - Notice of motion disposed off.

Maritime Lien

57 O. Konavalov v. Commander, Coast Guard Region (2006) 4 SCC 620

Constitution - Right to Wages - Maritime lien - Article 21 of the Constitution of India and Section 144 of the Merchant Shipping Act 1958 (Act) - Cargo was treated as smuggled goods and confiscation of ship ensued owing to confiscation of goods - Held, right of seamen to wages was an integral part of the right to livelihood and was entitled to the protection under Article 21 of the Constitution of India - Section 144 provides that the right of the seaman to wages was unfettered and no limitation on the entitlement was under the Act - Therefore, such a right conferred by the statute could not be infringed, affected or neglected, except by express provisions to the contrary

Customs - Wages - Maritime lien - Appellant filed an application to pay wages from the sale proceeds of cargo or a direction for sale of ship and pay wages as first charge - Respondent stated that since the vessel was confiscated there was no question of first charge - Whether the crew was entitled to wages - Held, crewmen by virtue of them being crewmen have a lien on the vessel and were entitled to claim such wages that were due to them - Rationale being wage lien arises from services rendered to the ship members of ship from the date of engagement till deportation - Crew were entitled to wages - Section 115 of the Customs Act, 1962 would not disentitle the crew of the lien for recovery of wages as it was an established practice in the law of seas - Seamen entitled to full wages - Appeals allowed

Order 7 Rule 11

58 Liverpool & London S.P & I Association Ltd. v. M.V Sea Success I And Another (2004) 9 SCC 512

Civil - civil Procedure Code - Section 44A, 104, 117, Order 7 Rule 11, 11A, 14, Order 37, Order 43 Rule 1, Order 49 Rule 3 - Appellant is an association of ship owners which offers insurance cover in respect of the vessels entered with it for diverse third party risk - No vessel operates without a protection and

indemnity cover and has been made compulsory for a ship to have the same to enter the major ports in India - Respondents entered into contract with the appellant but have not paid the insurance premium for the various risk cover - Necessity of this covers are commercial expediency - Each member of the club is under a duty to refund the damage suffered by any one of them and pay on mutual basis each other's claims - Unpaid insurance premium of the club would come within the purview of necessities - Unpaid insurance premium being a maritime claim would be enforceable in India - The order of the single judge determines the entitlement of the club to receive the unpaid insurance claim and imposes an obligation onto the respondent to pay the same and the order can only be a judgment and therefore Letters Patent Appeal was maintainable - Matter to High Court to decide the preliminary issue and to dispose off the matter as expeditiously as possible.

59 Ms. Crescent Petroleum Ltd. v. M.V. Monchegorsk & Another

1999 SCC OnLine Bom 610

Civil Procedure Code, 1908 - Order 6 Rule 16(c) r/w Section 151 of the Civil Procedure Code, Letters Patent and Article 215 of the Constitution of India, 1950 - Inherent powers of High Court - Striking out pleadings - Abuse of process - Only if facts germane to the issues not disclosed or misstated - All inaccuracies not necessarily lead to dismissal of the cause. The High Court has inherent powers by virtue of Section 151 of the Code of Civil Procedure, 1908, Letters Patent and Article 215 of the Constitution of India to prevent the abuse of its process. It is axiomatic that greater the power, greater the caution in exercise thereof. This power has been specifically incorporated in Order 6 Rule 16(c) of the Code of Civil Procedure after 1.2.1977. It has been exercised on very rare occasions. It is an abuse of the process when facts germane to the issue are either not disclosed to the Court or are misstated. However, all inaccuracies will not lead to the dismissal of the cause. The inaccurate facts must enable the plaintiff to obtain relief which they would not have obtained if they had stated the correct facts.

Proximate Cause of Loss

60 United India Insurance Co. Ltd. (Hull Division) v. SBK Shipping Private Ltd.

2016 SCC OnLine Mad 1726

Marine Insurance – Perils of the Sea – Tsunami as Insurable Risk – Doctrine of Proximate Cause – Interpretation of Marine Hull Policy – Whether damage to insured barge caused by tsunami is excluded from insurance coverage on the ground that tsunami originated from an undersea earthquake – Clauses 4.1.1 and 5 of the Institute Time Clauses (Hulls) Port Risks – Held, policy expressly covered loss caused by "perils of the sea" while excluding loss caused by earthquake – Though tsunami was scientifically triggered by an undersea earthquake, the proximate and effective cause of the damage to the insured barge was the tsunami, which constituted a peril of the sea, whereas the earthquake occurring thousands of miles away was only the remote cause – In determining liability under a marine insurance policy, the immediate and efficient cause of the loss, and not its remote origin, must be considered – Where the policy contained no provision excluding loss caused by tsunami or by insured perils resulting from an excluded peril, the insurer could not deny indemnification by tracing the chain of causation to the earthquake – Doctrine of contra proferentem held inapplicable as the policy terms were clear and unambiguous – Repudiation of the insurance claim held arbitrary and unsustainable – Order directing insurer to honour the claim upheld – Appeal dismissed.

61 O. Sivadasan v. The New India Assurance Co. Ltd. & Ors.

2011 SCC OnLine Ker 3972

Marine Insurance – Perils of the Sea – Insurer's Liability – Section 55 of the Marine Insurance Act, 1963 – Whether the insurer could repudiate a marine insurance claim on the ground that the exact cause of the vessel's loss was not established and the accident was allegedly caused by the negligence of the crew – Held, mis-joinder of parties or causes of action is a procedural irregularity and not a ground for dismissal. Under Section 55 of the Marine Insurance Act, loss proximately caused by a peril of the sea includes fortuitous accidents resulting from crew negligence, unless wilful

misconduct of the insured is proved. In the absence of evidence of fraud or deliberate sinking of the vessel, the insurer was liable to indemnify the insured. Appeal allowed.

Warranty

62 Hind Offshore Private Limited v. IFFCO-TOKIO General Insurance Company Limited

(2023) 9 SCC 407

Consumer - Class certificate - Concealment of fact - Appellant entered into Bareboat Charter Party Agreement for sea vessel - Appellant obtained Marine Hull Insurance Policy in respect of said vessel from Respondent covering vessel for various risks including perils of seas which was subject to vessel possessing Class Warranty - Vessel on voyage suffered major damage to its port main engine which was temporarily repaired - Appellant had presented invoice towards cost to be incurred and Respondent issued cheque as advance payment for replacing engine crank shaft and other components - Subsequent to term of first policy ending, Appellant obtained Class Certificate - Unfortunately for Appellant, vessel on voyage was struck by Tug Boat as result of which vessel sank with all cargo on board - Appellant submitted claim due to total loss of vessel and cargo - Surveyor ascertained that owners/representatives of Appellant had not informed Bureau of shipping about previous damage to port main engine and bureau of shipping only based on their inspection, had issued Class certificate - Since claim was not settled by Respondents, Appellant approached National Consumer Commission by filing Consumer Complaint towards loss of insured asset, loss of earnings and interest on insured asset - National Commission dismissed consumer complaint by holding that insurance company was under no contractual or legal obligation to reimburse complainant company for loss suffered by it on account of sinking of vessel - Hence, present appeal - Whether obtainment of Class Certificate based on which present policy was issued would be valid to be invoked by Appellant in respect of damage suffered in accident.

63 M/s. Rajankumar and Brothers (Impex) v. Oriental Insurance Company Ltd.

(2020) 4 SCC 364

Consumer - Losses incurred - Breach of warranty - Appellant firm in business of import-export of various commodities, including steel coils - Respondent insurance company issued Marine Cargo Cover Note for sum covering voyage from any port - On account of failure of vessel's crane during discharge, discharge could not take place, and subject vessel was removed from allotted berth - Appellant filed consumer complaint before National Commission against the Respondent, asking for compensation on account of losses incurred, for deficiency in service - National Commission found that Appellant had failed to prove that subject vessel was in compliance with Institute Classification Clause (ICC) stated in Marine Insurance Policy, hence complaint was dismissed - Hence, present appeal - Whether Appellant had committed breach of warranty with respect to compliance with ICC and Respondent had waived such breach of warranty by Appellant.

Insurable Interest

64 Contship Container Lines Ltd. v. D.K. Lall & Ors. (Shri D.K. Lall, proprietor of M/s Lall Enterprises, and National Insurance Company Ltd.)

(2010) 4 SCC 256

Consumer Protection – Carriage of Goods by Sea – Limitation of Carrier's Liability – Sections 2(1)(g) and 21 of the Consumer Protection Act, 1986; Rule 5 of the Carriage of Goods by Sea Act, 1925 (as amended) – Whether the carrier was liable to pay compensation based on the actual value of undelivered goods or whether its liability was restricted by the Bill of Lading and the statutory limitation – Held, the Bill of Lading is the governing document for determining the number of packages, and compensation cannot be calculated on the basis of the packing list. Under the amended Rule 5, the carrier's liability is limited to 666.67 Special Drawing Rights per package or 2 Special Drawing Rights per kilogram, whichever is higher. Since the nature and value of the goods were neither declared nor incorporated in the Bill of Lading, the shipper was not entitled to claim compensation based on the actual value of the goods. The National Commission erred in awarding

compensation in US Dollars beyond the statutory limit. The award was accordingly modified by restricting compensation to the rupee equivalent of 666.67 Special Drawing Rights.

Utmost Goodfaith

65 Elecon Engineering Company Limited v. Rickmers Dubai and Others

2019 SCC OnLine Bom 1690

Insurance - Damage to consignment - Suit for compensation - Sections 19 and 20 of Marine Insurance Act, 1963 - Present suit filed for compensation for damage caused to subject consignment - Whether case made out for grant of relief as prayed - Held, plaintiff proved loss is covered under insurance policy issued by defendant - Defendant failed to prove that plaintiffs were aware and/or deemed to be aware that suit consignment was carried on deck of vessel - Defendant failed to prove that plaintiff committed breach of Sections 19 and 20 of Marine Insurance Act - Defendant is liable to indemnify plaintiff for loss caused to said consignment - Suit decreed.

Wrongful Arrest

66 Navbharat International Ltd. v. Cargo Onboard M.V. Amitees (at Kandla) and Ors.

2014 SCC OnLine Bom 251

Admiralty and Maritime Laws - Wrongful arrest of cargo - Undertaking as to damages - Enforcement of - Rule 941 of Bombay High Court (Original Side) Rules - Section 22(1) of Sick Industrial Companies Act, 1985 - Plaintiff had obtained ex parte order of arrest of cargo on board M.V. AMITEES after furnishing undertaking to pay such damages as Court may award if any affected party sustained prejudice - Division Bench subsequently held arrest to be wrongful - After withdrawal of suit, defendants filed Notices of Motion for enforcement of undertaking and for award of damages - Plaintiff contended that in view of pendency of reference before BIFR/AAIFR,

proceedings could not continue without consent under Section 22(1) of SICA - Whether Notice of Motion to enforce undertaking amounted to a "suit for recovery of money" or "proceeding" barred by Section 22(1) - Held, expression "suit" in Section 22(1) has to be given its ordinary and restricted meaning, namely a civil proceeding instituted by plaint and culminating in decree - Notice of Motion taken out in same admiralty proceedings to enforce undertaking given to Court under Rule 94I does not commence with plaint and cannot be treated as a suit - Such motion is merely a procedure to enable Court to determine whether prejudice was caused by wrongful arrest and to quantify damages payable under solemn undertaking furnished to Court - Proceedings contemplated under first limb of Section 22(1) relate to winding up, execution, distress or the like against property of company, or appointment of receiver, and present motion did not fall in that category - Bar under Section 22(1) was therefore inapplicable - Notices of Motion directed to proceed for determination of prejudice and quantum of damages.

67 Lufeng Shipping Co. Ltd. v. M.V. Rainbow Ace

**2014 SCC OnLine
Bom 617**

Civil - Compensation - Maritime claim - Present application filed to claim compensation for losses/damages/prejudice suffered in view of order of arrest obtained by Plaintiff against Defendant Vessel on basis of maritime claim - Whether Applicant entitled for any amount of compensation in present facts and circumstances - Held, Respondent-Defendant vessel had first class P&I Cover and Applicant could have furnished security by way of bank guarantee - Applicant could have atleast offered club letter of undertaking - Not Applicant's case that it offered club letter of undertaking but Plaintiff rejected - Evident that Applicant chose not to furnish security and thereby lose its assured income - Since it was not case of Defendant that it was unable to mitigate its losses or it took all steps to mitigate its losses but still ended up suffering prejudice to amount as it claims, not inclined to grant any amount as compensation to Applicant - Application dismissed.

68 Chrisomar Corp. v. MJR Steels Pvt. Ltd.

(2018) 16 SCC 117

Marine Laws - Change of ownership - Arrest of vessel - Plaintiff filed admiralty suit in High Court praying for arrest of vessel - By order, vessel was so arrested but nobody came forward for release of vessel at that point of time - Appeal was made to Division Bench - Division Bench held that Plaintiff's first witness admitted fact that vessel's ownership changed hands and that on date of re-arrest, it was Respondent who was owner - Division Bench reversed Single Judge's decision and held that suit was liable to be dismissed - Whether, on date of arrest Respondent happened to be owner of vessel.

Auction procedure and priorities

69 Sparebanken Sogn Og Fjordane v. M.V. Bos Angler

2012 SCC OnLine Bom 1752

Civil - Applicability of Rules/validity of sale of vessel - Rule 951 of High Court (Original Side) Rules - Single Judge allowed sale of vessel to Plaintiff subject to conditions sale was confirmed in favour of Plaintiff had deposited sale consideration and was of opinion that no purpose would be served by inviting claims within specified period at instance of Plaintiff who was yet to obtain decree - Hence, this Appeal - Whether view taken by Single Judge was correct - Held, object underlying issuance of notice under Rule 951(3) was to furnish intimation to all persons who might have claim in respect of vessel or proceeds of sale thereof - Notice constitutes intimation of institution of proceedings before Court, sale of property and of fact that any Claimant who seeks to establish claim against property of vessel or sale proceeds must necessarily apply to that Court and prove his claim within stipulated period - Claimant who fails to bring claim before Admiralty Court, might none to be brought before Admiralty Court exercising jurisdiction in rem and before that Court alonetheless assert claim in personam against owner of vessel, but once vessel had been arrested and sold, claim in suit in rem had e - Single Judge had failed to make distinction between on one hand process involving an invitation of claims and culmination of that process in form of determination of order of priorities - There was no reason or justification to defer invitation of claims to date after decree if any was

passed in favour of Plaintiff - As matter of fact position in law would make it clear that even if Plaintiff were to fail in suit which asserts claim in rem, Court nonetheless was under an obligation to distribute sale proceeds to such Claimants whose claims have been duly proved in exercise of admiralty jurisdiction - Further Rule 951(2)(b) empowers not only party to suit, but party to any other suit in rem against property proceeded against or sale proceeds to apply for extension of period specified in order passed by Court - During course of hearing before Single Judge it was stated on behalf of Plaintiff that determination of priorities might have to await judgment and prayer in Motion was confined to notice inviting claims - Hence Single Judge had erred in coming to conclusion that issuance of notice inviting claims would have to be deferred until after judgment had been obtained by Plaintiff - It would not be reflective of correct position in law on interpretation of Rule 951 of Rules - Thus impugned order of Single Judge was set aside - Appeal allowed.

70 NKD Maritime Ltd. v. Board of Trustees of the Port of Mumbai

2022 SCC OnLine SC 1272

Commercial - Interim order - Present appeal is against a judgment passed by High Court allowing Commercial Appeal filed by the Respondent No. 1 and setting aside an interim order passed by the Commercial Division (Single Bench) of the same High Court disposing of Interim Application filed by the Appellant - Whether High Court is right in setting aside interim order?

71 Bharat Singh v. M.V. Kamal-XLVI

2015 SCC OnLine Bom 2802

Commercial - Arrested vessel - Recovery of wages from - Section 64 or under Section 64(2) of Major Port Trusts Act, 1963 (MPTA) - Present suit filed to recover dues of wages claiming maritime lien over arrested vessel in question - Whether case made out to decree suit in question - Held, port authority does not sell after distraining/arresting vessel under Section 64(2) of MPTA for recovery of its dues - Did not do anything under Section 64 of MPTA by approaching court for payment out of its claim from sale proceeds lying to credit of suit filed by rival claimant - Whether it can take away

money or not without filing suit, proving its claim and establishing its tenability in accordance with law has to be re-examined - Following question can be referred for consideration to larger bench - Whether port that did not exercise its rights and powers under Section 64 or under Section 64(2) of MPTA can approach court and seek payment of its claim from sale proceeds of vessel lying with Admiralty Registrar pursuant to court auction in suit filed by rival claimant, without being required to prove its claim in suit and establish its tenability - Matter referred.

Procedural and maintainability issues

72 Owners and Parties interested in M.V. Polaris Galaxy v. Banque Cantonale De Geneve

(2024) 5 SCC 750

Commercial - Addition of a party - Section 12 and 14 of Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 - Present appeals are against a judgment passed by the Commercial Appellate Division of the High Court allowing Commercial Appeal filed by the Respondent, and setting aside an order passed by the Commercial Division (Single Bench) of the High Court, adding Gulf Petroleum FZC as Defendant in the Admiralty Suit filed by the Respondent -Whether an appeal lies to the Commercial Appellate Division of the High Court from an order of the Commercial Division (Single Bench) of the same High Court for addition of a party, in an Admiralty Suit governed by the Act, 2017?

73 Shipping Corporation of India Ltd. v. Machado Brothers

(2004) 11 SCC 168

Section 151 - Inherent powers of court--Application under section 151-- Maintainability--Suit for declaring order terminating agency contract as illegal--Interim injunction restraining appellant from interfering with agency, upheld by High Court in revision--Anticipating a subsequent termination on ground of financial irregularities, respondent filing another suit for production of accounts and both suits pending appellant issuing another notice of termination against which respondent filing a third suit for permanent injunction wherein trial court ordering status quo and on

revision High Court remanding the matter--Appellant filing interlocutory application for dismissal of first suit on ground that it had become infructuous the subsequent notice being subject-matter of third suit-- Rejection on ground of lack of bona fides and the injunction in first suit having become final same not be vacated by seeking dismissal of suit-- High Court also dismissing petition on ground that dismissal of the suit would prejudice respondent--Unsustainable--Courts erred in continuing an infructuous suit just to keep the interlocutory order alive--Interlocutory orders are in aid of final orders and not vice versa--If the suit becomes infructuous consequent dismissal thereof would not cause any prejudice to plaintiff and if a party having a legal right to ask for dismissal of an infructuous suit, same not be termed malice or without bona fides-- Application of appellant for dismissal of the first suit under section 151, CPC maintainable--First suit by respondent dismissed as infructuous.

74 The Board of Trustees of The Port of Mumbai v. M.V.Kamal XV and Ors

2018 SCC OnLine Bom 9742

Admiralty Law — Maritime claim — Port dues — Recovery of port, pilotage, anchorage and berth hire dues — Water conveyance charges — Limitation — Pleading beyond plaint not permissible. Plaintiff Port Trust sued for recovery of port/pilotage/anchorage dues, berth hire dues, and monthly water conveyance charges against the vessel and subsequent purchaser. Court held that the suit was maintainable in part; one invoice was barred by limitation, a later bill not pleaded in the plaint could not be allowed, and unchallenged documentary and oral evidence established the remaining dues. Security furnished by defendant was directed to be adjusted against the decretal amount. Suit decreed partly with interest; no order as to costs.

Seafarers' wage claims and protected rights

75 Interaccess Marine Bunkering Ltd. v. K.M. Allauddin

2009 SCC OnLine Mad 934

The High Court of Madras addressed the priority of claims against the sale proceeds of the vessel MV NEAMONITISA, involving Interaccess Marine

Bunkering Ltd., Gulf Marine and Industrial Supplies Inc., The Royal Bank of Scotland, and Capt. Papaspamatiou. The court determined that the claim for wages by Capt. Papaspamatiou constituted a maritime lien, taking precedence over the mortgage claim by The Royal Bank of Scotland. Claims for the supply of necessities by Interaccess Marine and Gulf Marine did not constitute maritime liens and thus did not have priority over the mortgage. The court ordered payment to Capt. Papaspamatiou first, with the remaining funds to be paid to The Royal Bank of Scotland, dismissing the applications of Interaccess Marine and Gulf Marine.

76 The Swedish Club v. V8 Pool Inc. and other

**Unreported HC
Bombay
Commercial Appeal
No. 108 of 2021**

Admiralty — Arrest of vessel — Crew wages — Sheriff's expenses — P&I Club — Subrogation — Maritime lien — Priority of claims Crew wages accruing after arrest of vessel held, are Sheriff's expenses and recoverable out of sale proceeds in priority. P&I Club paying crew wages under Maritime Labour Convention, 2006, with leave of Court, entitled to stand in shoes of crew and claim reimbursement as Sheriff's expenses. Pre-arrest wages, if paid after obtaining prior leave, may be assigned status of maritime lien and pursued in accordance with law.

Sale of goods r/w Bill of Lading – passing of risk & Property – FAS, FOB, CFR, CIF

**77 B. K. Wadeyar v. M/S. Daulatram
Rameshwarlal**

**1960 SCC OnLine
SC 151**

The respondents firm claimed exemption from Sales Tax under Art. 286(I) (b) of the Constitution in respect of sales 925 made by them of cotton and castor oil on the ground that the sales were on F.O.B. contracts under which they continued to be the owners of the goods till those crossed the

custom barrier and entered the export stream. They also contested the purchase tax to which they were assessed under s. 10(b) of the Bombay Sales Tax Act. The High Court upheld the contention of the respondents regarding the Sales Tax but held that they were liable to pay purchase tax. On appeal by both the parties. Held, that the goods remained the seller's property till those had been brought and loaded on board the ship and so the sales were exempted from tax under Art. 286(i) of the Constitution. The word "a person" in s. 10(b) of the Bombay Sales Tax Act had been correctly interpreted as "a registered dealer" and the purchasing dealers had been rightly assessed to purchase tax. The normal rule in F. O. B. contracts was that the property was intended to pass and did pass on the shipment of the goods. The presumption in F. O. B. contracts was that it was the duty of the buyer to obtain the necessary export licence, though in the circumstances of a particular case that duty might fall on the seller. *H.O. Brandt & Co. v. H. N. Morris & Co. Ltd.*, [1917] 2 K.B. 784 and *M. W. Hardy & Co. v. A. V. Pound & Co., Ltd.*, (1953) 1 Q.B. 499, considered. "Export" under the Import and Export Control Act having been defined as "taking out of India by land, sea or air" it could not, under the Export Control Order, be held to have commenced till the ship carrying the goods left the port or in some cases passed the territorial waters.

78 Steel Bros. and Co. Limited v. Dayal Khataw and Co

1923 SCC OnLine Bom 56

Contract on c.i.f. s.w. terms - Delivery of bill of lading and insurance policy essential before payment could be demanded-Delivery telegram not a sufficient document-Arrival of goods-Purchaser could insist on survey of goods, if he finds goods to be of inferior quality-Surveyor's report, tender of, necessary. The plaintiffs sold in Bombay a quantity of rice to the defendants on c.i.f. s.w. terms, the goods sold were then shipped from Rangoon along with similar goods sold by plaintiff's to other merchants. One general invoice was made up for the whole cargo and sent out by plaintiffs to their Bombay branch. A surveyor's report was prepared in Rangoon and later sent to the Bombay branch; but it was not shown to the defendants. The shipment was covered against marine and war risks by general insurance effected in London. The shipping Company sent a telegram, called "delivery telegram," to their Bombay office authorising that office to deliver the

shipment to plaintiffs' branch in Bombay. A copy of the telegram was also sent direct to the plaintiffs' branch in Bombay. On arrival of the goods in Bombay, the defendants paid the landing charges and the goods were cleared by their Muccadam. The next day the plaintiffs called upon the defendants to pay the price and take away the delivery telegram. The defendants, however, examined the goods in the landing shed, and finding that they were not up to the contract quality desired the plaintiffs to arrange for an early survey of the goods. The plaintiffs demanded payment against the delivery telegram. After due intimation to plaintiffs, the defendants had a survey made of the goods; and along with the surveyor's certificate they tendered the amount due according to the survey. The plaintiffs refused to accept the amount and eventually sold the goods on defendants' account. In a suit to recover deficit on such resale:- Held:

- (1) That the plaintiffs were under the contract bound to tender the bill of lading, the insurance policy, the invoice and the surveyor's report before demanding payment of the defendants; and that the latter were not bound to pay against the delivery telegram alone;
- (2) That, in the absence of the usual documents, the defendants were entitled to ask for survey of the goods, as the goods had already arrived.

A buyer who rejects goods on a wrong ground is not thereby precluded from relying on a valid ground which in fact exists.

79 Ramalingam & Co v. The State Of Madras

**1962 SCC OnLine
SC 209**

The assessees were doing business principally as exporters of vegetable fibres to foreign countries. The contracts of sale were C.I.F. or C.F. and were made by correspondence on approval of samples sent by the assessees to the foreign buyers. The price was payable by draft upon bank credit to be opened by the buyer; who opened with his own bankers 955 an irrevocable letter of credit in favour of the assessees for 95% of the net invoice value.

Intimation of the opening of the letter of credit was then given to the assessees by the local bankers in India who were the agents of the foreign bankers. The local bankers, however, did not by intimating the

opening of the letter of credit undertake any liability, and the assessees were expressly informed that they would not be released from their liability under the Bill of Exchange drawn by them. On receipt of the information about opening of the letter of credit the assessees shipped the goods, obtained bills of lading in their own names and lodged the shipping documents endorsed in blank with their own bankers together with the invoice and Bill of Exchange for 95% of the invoice value. Bills of lading were handed over to the assessees bankers with the definite instructions to pass on the shipping documents to the buyers only on payment. The assessees then discounted the Bills through their own bankers. The shipping documents were forwarded to the foreign bankers who on presentation paid 95% of the invoice amount. The Bill of lading was then delivered by the foreign banker to the buyer and goods were unloaded. For the year 1945-46 the Commercial Tax officer taxed the assessees under the Madras General Sales Tax Act, 1930. The Commercial Tax officer rejected the claim of the assessees that the amounts in respect of overseas transactions were exempt from liability to tax, because in his view the export transactions were sales within the province of Madras. The Board of Revenue confirmed the order and held that the property in the goods passed to the buyers in a large majority of the export transaction when the goods were shipped. The assessees contended that the export sales were at the material time totally outside the provisions of the Madras General Sales Tax Act and the order of the assessment was ultra vires and beyond the powers of the Authority. The plea of the State of Madras was that the foreign bank opening the letter of credit is an agent of the buyer, and that the bank authorises its own branch to pay the price to the shippers and by the arrangements made by opening the letter of credit, price is paid to the vendor in his own country against the Bill of lading endorsed in blank.

80 National Insurance Co. Ltd. v. R.P. Export Pvt. Ltd.

**2019 SCC OnLine
NCDRC 1620**

The Complainant (a supplier/consigner of cotton bags) shipped 480 cartons by sea under Bill of Lading No. X001559 HBG dated 13.07.2002 to Austria for invoice value US\$14,520. A pre-dispatch inspection by surveyor Mr. Manash Dev Mallick (report dated 15.07.2002) and Customs checks recorded the goods as in "okay" or good condition. The Complainant obtained a Marine

Cargo Insurance Policy (ICC(A)) for \$7,82,600. On arrival in Austria the consignment was found wet and mouldy after floods; the consignee's survey and Transpack GmbH reported contamination by fresh water. The Insurance Company repudiated the claim (letters dated 08.09.2005 and 27.01.2006) alleging sea water damage and delayed notice. The Complainant sought \$7,04,099/- plus interest, compensation and costs. The District Forum allowed the complaint in part (award \$7,04,099/-, \$20,000 compensation, \$5,000 costs). The State Commission concurred with the District Forum. The Insurance Company filed this Revision Petition under Section 21(b) of the Consumer Protection Act, 1986, which the National Commission dismissed.

Customs & Port Compliance: Judicial Perspectives and issues in port operations

81 Kandla Port Trust v. Goodrich Maritime Private Limited And Another

2010 SCC 11 789

Infrastructure Laws — Ports and Port Trusts - Major Port Trusts Act, 1963 - Ss. 61 and 62 - Container storage charges and ground rent incurred due to seizure and confiscation of containers by authorities - Sustainability - Tariff Authority for Major Port Trusts (TAMP) Order No. 120 dt. 28-8-2000 - Rule of not charging storage charges/ground rent for 75 days - Applicability - Containers confiscated by Customs for containing war material/explosives instead of description given in bills of lading - Port Trust raising container storage charges and ground rent for keeping containers in port for destuffing and auction of the cargo - Plea that Port Trust is not bound to take action for release of containers and destuffing goods confiscated by Customs Authorities Held, High Court is duty-bound to consider counter-affidavits of Port Authorities before deciding liability of respondent to pay container storage charges and ground rent - High Court ought to have examined issue in correct perspective before holding that levy of container storage charges or ground rent not permissible on ground that Authorities had not taken action to release and destuff containers - Applicability of rule of not charging storage charges/ground rent for 75 days if goods confiscated by authorities, not examined - Matter remitted to High Court for decision afresh — Constitution of India - Art. 226 - Duty to consider counter

where impugned order in favour of respondent. Kutch Shipping Agency (P) Ltd. v. Kandla Port Trust, (2010) 11 SCC 795, distinguished B. Practice and Procedure — Appeal - Counter-affidavit by respondent - Filing of in appeal, where impugned order was in favour of respondent - Permissibility - Held, respondent has such a legitimate right - Civil Procedure Code, 1908- Or. 41 R. 22 - Filing of counter-affidavit, in appeal against favourable decree

82 Goodrich Maritime Pvt. Ltd. v. Kandla Port Trust and Ors.

**2024 SCC Online
Guj 4407**

Ports – Ground Rent – Container Storage Charges – Confiscated Containers – Liability of Shipping Agent – Customs Act, 1962 – Major Port Trusts Act, 1963 – Whether a Port Trust could levy container storage charges/ground rent upon a shipping agent in respect of containers confiscated by the Customs authorities and lying within the port premises – Held, where imported goods as well as containers were confiscated under Section 111(d) of the Customs Act and remained in the Port area until they were de-stuffed under Customs supervision, the Port Trust was entitled to recover container storage charges/ground rent from the shipping agent for the period during which the containers occupied port premises. The shipping agent having failed to challenge the confiscation orders could not contend that the containers were not liable to confiscation by relying upon the subsequent decision in Chairman, Board of Trustees, Cochin Port Trust v. Areebee Star Maritime Agencies Pvt. Ltd. The declaration of the Port Trust as a custodian under Section 45 of the Customs Act merely regulated its obligations as custodian and did not prohibit recovery of storage charges from the shipping agent. Accordingly, the Port Trust was entitled to revise and recover container storage charges from the date of arrival of the containers until the date of de-stuffing, and the appeal was disposed of with directions to issue revised bills.

83 Mumbai Port Trust v. M/S. Shri Lakshmi Steels And Ors.

**(2018) 14 SCC
317**

Major Port Trusts – Demurrage Charges – Detention of Imported Goods by Customs – Liability of Importer – Customs Cargo Service Provider – Major Port Trusts Act, 1963 – Customs Act, 1962 – Handling of Cargo in Customs

Areas Regulations, 2009 – Whether a Major Port Trust could be directed to waive demurrage charges on the basis of a detention certificate issued by Customs authorities – Whether Customs/DRI could be directed to bear demurrage and container detention charges arising from detention of imported goods – Held, the statutory right of a Major Port Trust to levy and recover demurrage under the Major Port Trusts Act, 1963 is not curtailed by the Customs Act, 1962 or the Handling of Cargo in Customs Areas Regulations, 2009. Regulation 6(1), being subordinate legislation and expressly made subject to any other law for the time being in force, cannot override the statutory powers of a Major Port Trust to recover tariff and demurrage fixed under the Act. Mere issuance of a detention certificate by Customs does not absolve the importer of liability to pay demurrage, nor can the Port Trust be compelled to waive such charges. In the absence of a clear finding of mala fides or gross abuse of power by Customs or DRI, no direction can be issued requiring them to reimburse or bear demurrage or container detention charges. The importer must first clear the goods upon payment of the statutory charges and may thereafter pursue any independent claim for reimbursement, if available in law. The judgments of the High Court directing waiver of demurrage and fastening liability upon Customs/DRI were set aside, and the appeals filed by the Mumbai Port Trust and Union of India were allowed.

Major Ports Authority Act 2021

84 Forbes Forbes Campbell And Company Limited v. Board Of Trustees, Port Of Bombay

(2015) 1 SCC 228

Major Port Trusts – Demurrage – Port Charges – Liability of Steamer Agent – Bills of Lading – Bailment – Major Port Trusts Act, 1963 – Sections 2(o), 42, 43, 60, 61 and 62 – Whether a steamer agent is liable to pay demurrage and port charges in respect of goods lying in the custody of the Port Trust where the consignee has neither taken delivery nor obtained endorsement of the bill of lading – Held, where the bill of lading has not been endorsed and no delivery order has been issued, the relationship of bailment under Sections 42 and 43 of the Major Port Trusts Act subsists between the steamer agent (representing the shipowner) and the Port Trust, rendering the steamer agent liable for demurrage and port charges until the consignee acquires the right to delivery. Once the bill of lading is endorsed or a delivery order is

issued, the liability shifts to the consignee or endorsee. The limited lien conferred upon the shipowner under Section 60 extends only to freight and other charges payable to the shipowner and does not include demurrage or port charges payable to the Port Trust. Nevertheless, the absence of a statutory right of recovery under Section 60 does not extinguish the steamer agent's liability arising from the statutory bailment. The Port Trust is also empowered under Sections 61 and 62 to recover its dues by proceeding against the goods in its custody. Accordingly, the judgments of the Bombay and Calcutta High Courts holding the steamer agent liable for demurrage and port charges were affirmed, and the appeals were dismissed.

85 Board of Trustees of Paradip Port Trust v. Tariff Authority for Major Ports, Mumbai and Ors.

2023 SCC OnLine Ori 7073

Ports – Tariff Fixation – Captive Berth – Wharfage Charges – Revision of Tariff – Contract vis-à-vis Statutory Powers – Major Port Trusts Act, 1963 – Sections 47A, 48 and 52 – Whether a Major Port Trust could unilaterally revise tariff for use of a captive berth notwithstanding a contractual clause requiring mutual agreement – Whether the decision of the Tariff Authority for Major Ports (TAMP) declining revision of tariff warranted interference under Article 226 – Held, although Section 48 of the Major Port Trusts Act empowers a Port Trust to frame scales of rates, the provision does not contain a non obstante clause overriding contractual arrangements between the parties. Where the agreement governing a captive berth expressly stipulated that tariff revisions would be effected only by mutual agreement, the Port Trust was bound by the contractual mechanism and could not unilaterally enhance the tariff. The arbitral award and appellate order upholding the contractual arrangement did not suffer from any legal infirmity. With effect from 1 April 1999, tariff fixation fell within the statutory jurisdiction of the Tariff Authority for Major Ports under Section 47A, and the TAMP, after extensive consultations, joint hearings and consideration of the parties' proposals, validly declined the revision sought by the Port Trust. Judicial review over tariff fixation by an expert statutory authority is limited to cases of arbitrariness, manifest unreasonableness or procedural illegality, none of which was established. Accordingly, the arbitral award, appellate order and the decision of the TAMP were upheld, and both writ petitions were dismissed.

86. Board Of Trustees, Port of Mumbai v. Indian Oil Corporation And Another

(1998) 4 SCC 302

Major Port Trusts – Statutory Lien – Arrest and Sale of Vessel – Winding-up Proceedings – Priority of Port Dues – Sections 64 of the Major Port Trusts Act, 1963 and Sections 446, 529 & 529A of the Companies Act, 1956 – Whether a Port Trust's statutory right to arrest and sell a vessel for recovery of port charges is subject to the control of the Company Court in winding-up proceedings – Held, Section 64 of the Major Port Trusts Act confers upon a Port Trust a paramount statutory right to arrest, detain and sell a vessel for recovery of its rates and charges. Such statutory lien stands above the claims of secured and unsecured creditors, including the pari passu rights of workmen under Sections 529 and 529A of the Companies Act. The Port Trust exercises an independent statutory power and is not required to obtain leave of the Company Court under Section 446 before arresting or selling the vessel. The statutory lien attaches to the vessel itself and cannot be transferred to the sale proceeds or subordinated to the claims of other creditors without the Port Trust's consent. Accordingly, the order directing the Official Liquidator to conduct a joint sale of the vessel and deposit the sale proceeds before the Company Court was set aside. The Port Trust was entitled to sell the vessel in accordance with the Major Port Trusts Act, realise its statutory dues in priority, and remit the surplus, if any, to the Official Liquidator. Appeal allowed.

Indian Ports Act

87 JSW Steel Ltd. v. The Board of Trustees of the Mumbai Port Trust Mumbai

2025 SCC OnLine SC 381

Ports – Wreck Removal – Liability for Removal of Wreck – Indian Ports Act, 1908 – Section 14 – Writ Jurisdiction – Whether liability for removal of a wrecked vessel and the requirement to furnish security under Section 14 of the Indian Ports Act could be fastened upon a cargo owner instead of the owner of the vessel – Whether the High Court was justified in disposing of the writ petition as infructuous without deciding the legal issue – Held, Section 14 of the Indian Ports Act contemplates issuance of notice for raising or removing a wreck and furnishing adequate security upon the owner of the vessel responsible for the wreck. Where the appellant was merely the owner of the cargo and not the owner of the sunken barge, the

determination of liability under Section 14 raised a pure question of law requiring adjudication. The High Court erred in treating the writ petition as infructuous merely because considerable time had elapsed and the wreck had already been removed. Mere systemic delay cannot defeat substantive rights, and a writ petition involving a pure question of law without disputed facts ought to be decided on merits. Accordingly, the impugned judgment was set aside, the writ petition was restored to the file of the High Court for adjudication on all issues, and it was clarified that if the appellant ultimately succeeded, it would be entitled to appropriate restitution of the amount deposited towards security. Appeal allowed; matter remanded.

88. Essar Shipping Ports And Logistics Ltd. v. Mr.S.Thirunavukarasu And Another

2025 SCC OnLine Ker 1650

Merchant Shipping – Wreck Removal – Environmental Protection – Wildlife (Protection) Act, 1972 – Merchant Shipping Act, 1958 – Liability of Shipowner – Marine Casualty – Whether the Chief Wildlife Warden was competent to direct the owner of a grounded vessel to remove the vessel from an ecologically sensitive coral reef and initiate proceedings under the Wildlife (Protection) Act, 1972 – Whether the existence of a Receiver of Wrecks under the Merchant Shipping Act, 1958 absolved the shipowner of responsibility for removal of the stranded vessel – Held, corals and associated marine flora and fauna constitute protected wildlife and habitat under the Wildlife (Protection) Act, 1972, empowering the Chief Wildlife Warden to issue directions for protection of the marine ecosystem and to initiate action where a grounded vessel posed a threat to such habitat. The existence of a statutory Receiver of Wrecks under the Merchant Shipping Act does not extinguish or transfer the primary responsibility of the shipowner for the consequences of a marine casualty. The polluter pays principle continues to govern liability, and the owner remains responsible for the costs and consequences arising from the grounding of the vessel, including environmental assessment and wreck removal. A pre-decisional hearing is not mandatory where immediate preventive action is required to avert environmental harm, and a post-decisional opportunity satisfies the requirements of natural justice in such circumstances. The Court further observed that the Merchant Shipping Act, 1958 contains significant legislative gaps regarding compulsory removal of hazardous wrecks and recommended legislative reform in line with the Nairobi International Convention on the Removal of Wrecks, 2007, which places financial responsibility for wreck removal upon shipowners. Accordingly, the

challenge to the notices issued by the Chief Wildlife Warden and the claim seeking directions to award salvage operations were rejected, and both writ petitions were dismissed.

89 Khanbhai Esoof Bhai v. The Union Of India (UOI), The Collector Of Customs And Ors.

1992 SCC OnLine Bom 705

Customs duty — Salvaged vessel — Scrap — Tender conditions — Canalising agency commission. The Bombay High Court held that a successful bidder could not, at a belated stage, reject tender conditions requiring payment of customs duty and commission to the canalising agency after having accepted the tender on those very terms. The Court further held that once M.V. Ocean Star capsized and sank, the salvaged vessel, its parts and scrap ceased to be an ocean-going conveyance and became “goods” liable to customs duty under Section 12 of the Customs Act, 1962. The fact that the vessel had originally entered territorial waters as a conveyance did not prevent duty from being levied when it was later wrecked and broken up. It also held that the canalising agency, MSTC, was entitled to its prescribed commission/service charges under the Import Policy because the canalised goods included re-rollable scrap in the form of old ships and vessels for breaking. The absence of direct services to the bidders was not a valid objection to the levy of those charges. On principle, the Court reiterated that customs duty is determined by the description of the imported goods, not by how they came into existence.

Merchant Shipping Act

90. Captain Subash Kumar v. Principal Officer, Mercantile Marine Department, Madras.

(1991) 2 SCC 449

Criminal - negligence - Sections 361 and 363 of Merchant Shipping Act, 1958 - a ship under command of appellant went into distress - distress message flashed to receiving station on land - some persons on board could not be rescued - respondent initiated proceedings under Section 363 for negligence committed by appellant - Section 363 enables Central Government to transmit case to Court which has jurisdiction under Section 361 to make enquiry against master, mate or engineer into charges for

incompetency or misconduct - complainant had no power under Section 363 to initiate proceeding - complaint before Metropolitan Magistrate quashed.

91 Anthonyarpicha v. Commandant Indian Coast Guard District

2018 SCC OnLine Ker 3230

Merchant Shipping – Shipping Casualty – Detention of Foreign Vessel – Preliminary Inquiry – Formal Investigation – Merchant Shipping Act, 1958 – Sections 359 to 369 – Article 226 of the Constitution of India – Whether the High Court could direct detention of a foreign vessel involved in an alleged collision at sea and compel authorities to conduct a formal investigation under the Merchant Shipping Act – Held, where the competent authorities had already conducted a preliminary inquiry under Section 359, carried out Port State Control inspection, and the Coastal Police had completed the investigation and found no necessity for the continued physical presence of the vessel, the Court, in exercise of its jurisdiction under Article 226, could not direct detention of the vessel merely on the basis of allegations made by the petitioners. The completion of the preliminary inquiry and the absence of any requirement by the investigating authorities for further detention justified permitting the vessel to sail. However, the closure of the writ petition would not preclude the competent authorities from initiating a formal investigation under Sections 360 to 369 of the Merchant Shipping Act, 1958, if subsequently found necessary in accordance with law. Writ petition closed.

92 C.V. Gangadharan v. Union Of India and Ors.

Unreported Supreme Court Civil Appeal No.7975 OF 2022 (Arising out of S.L.P.(Civil) No. 16051 of 2021)

Criminal - Preliminary enquiry - Sections 358, 359 and 360 of Merchant Shipping Act, 1958 - Present petition filed for seeking direction for proper enquiry/investigation to be conducted to ascertain whereabouts of Petitioner's son - Whether Respondent be directed to enquire/investigate to circumstances of disappearance of Petitioner's son - Held, fact that some

dissatisfaction/disagreement were there in relationship between Petitioner's son and his employers - Police did not apprise to fact that slippers of Petitioner's son were available on board after his disappearance - Fact that some organic remnants which were detected had not been subjected to proper examination to ascertain whether they were remnants of Petitioner's son - Preliminary enquiry had been conducted and report submitted not in accordance with provisions of Act, 1958 - Respondent-CBI had requisite infrastructure, competence and facilities to help Court in conduct of an enquiry/investigation - Therefore Respondent could be directed to register preliminary enquiry and enquire/investigate to circumstances of disappearance of Petitioner's son - Petition allowed.

**93 Jotun India Private Limited v. The Union
of India and Ors.**

**2018 SCC OnLine
Bom 36**

Goods and Services Tax - Order of Advance Ruling Authority - Writ against - Present petition filed to challenge order passed by Advance Ruling Authority, confirmed by Appellate Authority, holding that marine paint is standalone commodity with independent existence perceived as independent product rather than part of ship and that marine paint/anti-fouling paint is not integral part of ship - Whether orders under challenge need interference in writ jurisdiction - Held, view taken by Authority and Appellate Authority is based on material placed before it - Petitioner seeks to convert this limited enquiry in respect of Advance Ruling into appellate enquiry, which is not permissible in writ jurisdiction - Scrutiny in writ jurisdiction of orders passed by Authority and Appellate Authority is minimal - Petitioner, who sought advance ruling as to which entry marine paint should fall, was given full opportunity of hearing - Both Authorities dealt with issue in extensor - They took view in matter which cannot be considered as suffering from fundamental error or absurd or perverse - Petition dismissed

Port Dues

94 M/S. Gujarat Cypromet Ltd v. Union Of India & Others

(2005) 4 SCC 185

Major Port Trusts – Sale of Uncleared Cargo – Sale Expenses – Application of Sale Proceeds – Sections 61, 62 and 63 of the Major Port Trusts Act, 1963 – Whether the Port Trust was justified in deducting 50% of the sale proceeds of auctioned uncleared cargo towards expenses of sale pursuant to a Board Resolution – Held, Sections 61 and 62 of the Major Port Trusts Act empower the Port Trust to sell uncleared cargo by public auction after expiry of the prescribed period, while Section 63 mandates that the expenses of sale constitute the first charge on the sale proceeds. Having regard to the practical impossibility of determining the exact sale expenses for each individual auction, the Board was justified in adopting a uniform formula treating 50% of the sale proceeds as sale expenses. The resolution was based on administrative necessity and was supported by material demonstrating that the actual expenditure incurred on auctions, including publication, storage, staff deployment and other incidental costs, often exceeded the amount recovered under the formula. In the absence of any arbitrariness or statutory violation, the Board Resolution could not be held invalid. Accordingly, no interference was warranted under Article 136 of the Constitution, and the appeal was dismissed with costs.

95 Paradip Port Authority v. Paradeep Phosphates Ltd.

(2026) 4 SCC 672

Major Port Authorities – Revision of Tariff – Arbitration – Jurisdiction of Tariff Authority – Section 54 of the Major Port Authorities Act, 2021; Chapter V-A of the Major Port Trusts Act, 1963 – Whether the Port Authority could unilaterally revise the tariff payable under a bilateral agreement without the consent of the respondent and whether the dispute regarding revision of tariff was liable to be adjudicated by the Arbitrator or by the statutory tariff authority – Held, where the agreement between the parties expressly provided that tariff rates could be enhanced only by mutual agreement,

unilateral revision of rates by the Port Authority required adjudication by the competent statutory tariff authority. The Appellate Authority failed to independently examine the factual and legal issues relating to revision of tariff and merely affirmed the arbitral award through a cryptic order without proper reasoning. Under Chapter V-A of the Major Port Trusts Act, 1963, the Tariff Authority for Major Ports (TAMP) was constituted as an expert body for fixation and revision of port tariffs. Although Section 54 of the Major Port Authorities Act, 2021 contemplates the constitution of an Adjudicatory Board for tariff-related disputes, no such Board had been constituted. Consequently, by virtue of the statutory scheme, TAMP continued to possess jurisdiction to adjudicate the dispute. Since the issues concerning revision of tariff had not been examined by the competent expert authority, the matter was required to be decided by TAMP. The appeal was accordingly allowed, leaving the parties to seek adjudication before the competent tariff authority.

Interaction with admiralty jurisdiction

96 Piraeus Bank S.A. v. M.V. Evangelia M.

**2020 SCC Online
AP 667**

Admiralty – Ship Mortgage – Arrest and Judicial Sale of Vessel – Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 – Commercial Courts Act, 2015 – Whether the High Court could continue and modify the process for judicial sale of an arrested vessel secured by a first priority mortgage where the auction proceedings were delayed due to the COVID-19 pandemic – Held, the Admiralty Court, while exercising jurisdiction over an arrested vessel, possesses the authority to regulate, supervise and modify the procedure for judicial sale to safeguard the interests of the mortgagee, crew members and other maritime claimants. The unprecedented disruption caused by the COVID-19 pandemic constituted sufficient justification for revising the timelines earlier fixed for auction and sale of the vessel. The Court further directed that the earnest money deposited by a prospective bidder who had withdrawn from the bidding process be refunded upon appropriate application and notice to all

concerned parties. It was also directed that the reserve price of the vessel should not be disclosed in the public advertisement and should instead be determined by the Court at the stage of opening the bids to ensure transparency and secure the best possible price. Accordingly, the auction schedule was modified, appropriate directions were issued regarding refund of earnest money, publication of the sale notice and continuation of the judicial sale proceedings.

Cargo Claims Consumer

97 National Insurance Co. Ltd. v. Harsolia Motors

**(2023) 8 SCC
362**

Consumer Protection – Insurance Policy – Commercial Purpose – Sections 2(1)(d) and 2(1)(m) of the Consumer Protection Act, 1986 – Whether a commercial entity obtaining a fire insurance policy for its business premises ceases to be a "consumer" on the ground that the insurance was obtained for a commercial purpose – Held, an insurance policy obtained for indemnification of loss does not have a direct nexus with profit-making activity. Merely because the insured is a commercial enterprise does not exclude it from the definition of "consumer" under Section 2(1)(d). As the insurance service was intended to cover risk and compensate actual loss, and not to generate profit, the complaint was maintainable under the Act. Appeal dismissed.

98 Shipoil Limited v. M.T. Standorf

**2025 SCC OnLine
Kar 28587**

Admiralty – Maritime Claims – Jurisdiction – Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 – Commercial Courts Act, 2015 – Whether an admiralty action for arrest and sale of a vessel to enforce a maritime claim was required to be instituted before the Commercial Division under the Commercial Courts Act, 2015 or before the High Court under the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act,

2017 – Held, although disputes relating to admiralty and maritime law fall within the definition of "commercial dispute" under Section 2(1)(c)(iii) of the Commercial Courts Act, 2015, the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 is a subsequent and special legislation conferring exclusive admiralty jurisdiction upon the High Courts in respect of maritime claims, including arrest, detention and sale of vessels. Applying the principle *lex specialis derogat legi generali*, the Admiralty Act prevails over the Commercial Courts Act in matters governed by Sections 3, 4 and 5 of the Admiralty Act. The Commercial Courts Act does not create any bar to the exercise of the High Court's admiralty jurisdiction nor does it provide the specialised mechanism for arrest and judicial sale of vessels. Consequently, the application seeking return of the plaint under Order VII Rule 10 CPC on the ground that the dispute ought to have been instituted before the Commercial Division was devoid of merit and was dismissed.

99 Proactive Ship Management v. The Owners and Parties Interested in Vessel

2024 SCC OnLine Cal 1838

Civil - Pre-institution mediation - Revocation of Leave/dispensation granted - Section 12-A of Commercial Courts Act, 2015 (CC Act) - Present application was filed by defendant, seeking revocation of leave granted under Section 12-A of CC Act, which allowed plaintiff to bypass pre-institution mediation - Whether leave/dispensation granted under Section 12-A of CC Act is to be revoked - Held, dispensation granted under Section 12-A of CC Act could be revoked if no urgent interim relief was required at suit's initiation - Such leave is revocable similarly to leave under Clause 12 of Letters Patent, 1865, and could be challenged by defendant - No urgency in plaintiff's claims - Maritime claims require ownership continuity for arrest orders, which was absent here - Plaintiff's grounds for urgent relief invalidated - Order of vessel's arrest vacated - Leave/dispensation granted under Section 12-A of CC Act is revoked - Application allowed.

Multimodal Transport Documents

100 Bhat Carpets v. AMI India Logistics Pvt. Ltd. and Ors.

2004 SCC OnLine Del 503

Civil Procedure Code 1908 - Section 20 - Territorial jurisdiction - Held that the provision of section 25 of Multimodal Transportation of Goods Act, 1993 is not different from Section 20 of CPC - No part of cause of action arose in Delhi - Held that suit is not maintainable at Delhi - Multimodal Transportation of Goods Act, 1993, Section 25. [3] and [4].

101 Caravel Shipping Services Pvt. Ltd. v. Premier Sea Foods Exim Pvt. Ltd.

(2019) 11 SCC 461

Arbitration – Bill of Lading – Incorporation of Arbitration Clause – Multimodal Transport Document – Section 7 and Section 8 of the Arbitration and Conciliation Act, 1996 – Whether an arbitration clause contained in the printed terms and conditions annexed to a Bill of Lading formed part of the contract between the parties notwithstanding that the Bill of Lading was unsigned – Held, where the Bill of Lading expressly stipulated that the merchant agreed to be bound by all the terms, conditions, clauses and exceptions printed or otherwise contained therein, the arbitration clause incorporated in the printed conditions formed an integral part of the contract by virtue of Section 7(5) of the Arbitration and Conciliation Act, 1996. An arbitration agreement is required only to be in writing and need not necessarily be signed by the parties. A party relying upon the Bill of Lading as the foundation of its cause of action cannot simultaneously deny the applicability of the arbitration clause contained in the same document. The pendency of the civil suit or the stage of trial does not preclude reference to arbitration where the application under Section 8 was filed at the earliest opportunity. Accordingly, the judgments of the Sub Court and the High Court refusing reference to arbitration were set aside, the arbitration agreement was held binding on the parties, and the appeals were allowed.

102 MGH Logistics v. Murugasamy

**Unreported HC
Madras Arbitration
Original Petition
(Comm. Div.) No.314
of 2021**

Arbitration – Multimodal Transport Document – Bill of Lading – Appointment of Sole Arbitrator – Section 11 of the Arbitration and Conciliation Act, 1996 – Whether the High Court could appoint an independent sole arbitrator where the arbitration clause in a Multimodal Transport Document empowered the Multimodal Transport Operator to unilaterally appoint the arbitrator – Held, the arbitration clause contained in the House Bill of Lading constituted a valid arbitration agreement evidencing the parties' intention to resolve disputes through arbitration in accordance with Indian law. However, the contractual stipulation authorising the Multimodal Transport Operator to unilaterally appoint the sole arbitrator was unenforceable in view of the law declared by the Supreme Court prohibiting unilateral appointment of arbitrators by an interested party. As the respondent, despite service of notice under Section 21 of the Arbitration and Conciliation Act, 1996, failed to cooperate in the constitution of the arbitral tribunal, the petitioner was entitled to seek intervention under Section 11. Accordingly, the High Court appointed an independent sole arbitrator to adjudicate the disputes arising out of the Multimodal Transport Document and directed the arbitrator to enter upon the reference and conduct the proceedings in accordance with law.

Perils Covered and Exclusion

103 Sohom Shipping Pvt. Ltd. v. M/s. The New India Assurance Co. Ltd. & Anr.

**2025 SCC OnLine
SC 746**

Consumer - Special condition - Insurance claim - Appellant purchased newly built Vessel and sought to undertake its maiden voyage - Appellant sought to insure its voyage and Vessel, and submitted its insurance proposal to Respondent - Insurance contract was entered into between

parties which contained special condition that voyage should commence and complete before monsoon sets in - Vessel undertook voyage and on very next day it was anchored off due to bad weather and engine failure and Vessel ran aground - Appellant issued Notice of Abandonment to Respondent claiming total loss on ground that repair of Vessel would be more expensive than amount insured for - Respondent issued Repudiation Notice rejecting claim of Appellant on ground that Vessel set sail after monsoon set in breaching special condition in Insurance Contract - Aggrieved, Appellant filed a consumer complaint before National Commission which stand dismissed on ground that Appellant suppressed material facts by not disclosing all its plans to Respondent, and did not conduct itself in good faith - Hence, present appeal - Whether special condition stands breached justifying de facto repudiation of Appellant's claim by Respondent.

Marine Policy

104 National Insurance Company Limited. v. Sethia Oil Industries Limited (and Anr.)

2026 SCC OnLine Cal 4495

Insurance — Repudiation of claim — Overloading of tanker — Willful misconduct — Burden of proof — Marine survey report — Admissibility in cross-examination The insurer was held justified in repudiating the claim where the tanker was overloaded beyond its carrying capacity, the overloading was within the knowledge of the insured, and the accident was found to have been caused by such overloading. The Marine Survey Report, though elicited in cross-examination, was relied upon to hold that the contents stood established against the respondent who had tendered it. The Court held that the insurer had discharged the burden of proving fundamental breach and that the loss fell within Clause 2.1 excluding cover for loss attributable to willful misconduct of the assured. Consequently, the impugned judgment and decree were set aside and the appeal was allowed.

Claims Handling

105 Madgavkars Salvage and Towage Company Pvt. Limited. v. United India Insurance Company Limited, Panaji Divisional Office.

2014 SCC OnLine Bom 570

Marine Insurance – Marine Hull Insurance – Perils of the Sea – Proximate Cause – Actual and Constructive Total Loss – Sections 2(e), 55, 56, 57, 60, 62, 63 and 65 of the Marine Insurance Act, 1963 – Clauses relating to Total Loss, Constructive Total Loss and Sue and Labour under Marine Hull Policy – Whether insurer liable to indemnify insured where vessel allegedly capsized due to ingress of sea water following grounding and claim made for total loss and salvage expenses – Held, burden of proving that loss was proximately caused by an insured maritime peril always lies upon the assured – Mere ingress of sea water or capsizing of vessel does not by itself establish loss by perils of the sea unless such ingress is shown to have resulted from an accidental or fortuitous maritime casualty – Appellant failed to establish alleged grounding of vessel or damage to mud box as proximate cause of ingress of sea water, material witnesses including Master, Chief Engineer and Pilot were not examined, log book contained no entry regarding grounding and contemporaneous records contradicted subsequent statements relied upon by appellant – Consequently, proximate cause of loss remained unproved and insurer could not be held liable under policy – Further, salvage expenses could not be recovered under the Sue and Labour Clause as the policy expressly excluded salvage charges – Appellant also failed to establish either actual or constructive total loss since cost of repairs did not exceed insured value and statutory requirements for constructive total loss were not satisfied – Repudiation of insurance claim held justified and dismissal of suit affirmed – Appeal dismissed.

Average (General/Particular)

106 M/s. Peacock Plywood Pvt. Ltd. v. The Oriental Insurance Co. Ltd.

(2006) 12 SCC 673

Insurance - claim - without prejudice - Marine Insurance Act, 1963 - Sections 2, 60, 64, 78 and 78(4) - Evidence Act - Sections 20 and 32 - Limitation Act, 1963 - Schedule - Article 44 - Navy Act - Constitution of India - Article 12 - Interpretation of policy of marine insurance entered into by and between parties herein covering goods in transit in question in this appeal - Whether policy of insurance was an all risk policy - held, only ground on which claim of Appellant was not accepted was that question of any 'Nondelivery' did not arise as cargo had been in existence - Appellant on its own as also at behest of Respondent took steps for realisation of cargo to extent possible - only when ship could not leave Singapore Port due to un-seaworthiness, a claim of constructive total loss was made - Only because expression "without prejudice" was mentioned, same by itself not sufficient and would not curtail right of insured to which it was otherwise entitled to - expression "without prejudice" have to be construed in context in which it is used - If purpose for which it is used is accomplished, no legitimate claim can be allowed to be defeated thereby - appeal allowed.

Fraud Issues

107 New India Assurance Company Limited v. Hira Lal Ramesh Chand and Others (with Ratan Chand Deep Chand and Others)

(2008) 10 SCC 626

Consumer Protection Act, 1986 - Sections 2 (l) (g), 21 and 23--Deficiency in service--Insurance claim--Repudiation--Marine Insurance--Complainant dispatched 17 consignments of rugs and durries to Atlanta Rugs Inc. Atlanta, U.S.A.--Consignments covered by marine insurance--But claimants failed to prove and make out case of loss in respect of each and every consignment--Either during transit or within 60 days of

consignments being discharged from ship at Atlanta Port--They merely proceeded on assumption--That insurer liable when documents not retired by buyer--Untenable--No averment or proof that consignor etc. applied for delivery within 60 days of goods being discharged--No averment or proof that consignments lost or wrongly delivered within said period of 60 days--Liability of insurer under insurance policy came to end with reference to each of consignments--Claim of complainant against insurer--Liable to be rejected--Finding of deficiency in service--Unwarranted--Order of National Commission set aside.

Salvage

108 Angre Port Pvt. Ltd. v. Tag 15

**2020 SCC OnLine
Bom 5941**

Civil - Summary judgment - Application for - Order XIII-A and Order XII Rule 6 of Code of Civil Procedure, 1908 (CPC) - Present application filed under Order XIII-A read with Order XII Rule 6 of CPC seeking summary judgment against 1st Defendant Vessel in subject sum together with interest @ 18% p.a. till payment and/or realization plus poundage - Whether case made out to allow prayer as made for summary judgment - Held, claim made in present suit is not against defendant No. 2 at all but against sale proceeds of 1st Defendant Vessel - It continues to be action in rem - Any adjudication done by Defendant No. 2 regarding claim made by Plaintiff against Defendant No. 2, cannot attract principles of res judicata qua present suit - Present suit is seeking decree only against 1st Defendant Vessel - Claim in present suit is not barred by principles of res judicata - There will be summary judgment and decree in favour of plaintiff only against sale proceeds of 1st Defendant Vessel - Application disposed of.

109 Demyanenko v. K Shahajan

**2013 SCC OnLine
Mad 2854**

Admiralty Law – Maritime Lien – Crew Wages – Priority of Claims – Arrest and Judicial Sale of Vessel – International Convention on Maritime Liens and Mortgages, 1993 – Articles 4(1)(a), 5 and 12(2) – Vessel arrested pursuant to an admiralty suit filed by a ship chandler for recovery of dues – After the judicial sale of the vessel, several parties including the crew, ship repairers, cargo owners, suppliers of necessities and ship agents asserted competing claims against the sale proceeds – The crew sought payment of unpaid wages, repatriation expenses and wages accrued during the period of arrest, claiming that such dues constituted a maritime lien entitled to priority – Whether the claims of the crew should be satisfied before the claims of other maritime creditors – Held, claims for wages and other sums due to the master, officers and crew, including repatriation expenses, constitute maritime liens under Article 4(1)(a) of the International Convention on Maritime Liens and Mortgages, 1993 and enjoy priority over ordinary maritime claims – Under Article 12(2), the costs and expenses arising out of the arrest, custody and judicial sale of the vessel, including crew wages incurred during the period of arrest, are required to be paid first out of the sale proceeds – The claims of ship chandlers, ship repairers, suppliers of necessities, cargo owners and ship agents are maritime claims and do not rank above the maritime lien of the crew – In the absence of any municipal legislation governing the ranking of maritime claims, Indian courts may apply internationally accepted principles embodied in the 1993 Convention – Accordingly, the Advocate Commissioner was directed to disburse the crew's wages and repatriation expenses in priority from the sale proceeds of the vessel – Application allowed.

110 Jotindra Steel & Tubes Ltd v. MV Khalijia 3

**2024 SCC OnLine
Bom 1698**

Commercial - Losses and salvage costs - Admiralty suit for - Present suits seek vessel's arrest, sale, and indemnity for losses and salvage costs resulting from seawater damage, as defendants failed to deliver cargo due to vessel's unseaworthiness and subsequent abandonment - Whether case made out to decree suit as prayed for - Held, defendant Nos. 1 and 2, only remaining defendants, failed to support their defense with evidence or

documents and could not disprove plaintiffs' claims - Plaintiffs' claims are supported by evidence and documents, including D.G. Shipping's Preliminary Enquiry Report highlighting significant deficiencies, indicating first defendant-vessel was unseaworthy - Plaintiffs established their right to indemnity, having settled salvors' claim by furnishing and encashing bank guarantee due to vessel's unseaworthiness and poor management by Defendant No. 2 - Plaintiffs are entitled to reimbursement of bank guarantee amount and associated costs - Plaintiffs also claimed legal expenses incurred in defending salvors' claim and challenging award enforcement - Although they lacked supportive documents for actual costs, reasonable costs granted based on revised particulars of claim - Defendant Nos. 1 and 2 shall pay plaintiff named sum of money with 10% interest p.a., representing bank guarantee amounts furnished and encashed for salvors' claim - They shall also pay bank charges for securing salvors' claim –

**111 Mayar (HK) Ltd v. Owners and Parties, Vessel
MV Fortune Express**

(2006) 3 SCC 100

Admiralty Law – Admiralty Jurisdiction – Arrest of Foreign Vessel – Forum Selection Clause – Forum Non Conveniens – Order VII Rule 11 CPC – Carriage of Goods by Sea – Bill of Lading – Deck Cargo – Suppression of Material Facts – The appellants instituted an admiralty suit before the Calcutta High Court seeking damages for non-delivery of 456 timber logs allegedly lost during carriage aboard the foreign vessel M.V. Fortune Express and obtained an order of arrest of the vessel. The vessel was subsequently released upon furnishing a bank guarantee. Thereafter, the respondents sought rejection of the plaint under Order VII Rule 11 CPC and permanent stay of the suit, contending that the Bills of Lading contained an exclusive jurisdiction clause conferring jurisdiction upon Singapore courts, excluded liability for deck cargo, and that the plaintiffs had suppressed these contractual terms while obtaining the arrest order. The Division Bench accepted these objections, permanently stayed the suit and discharged the bank guarantee. The principal issues before the Supreme Court were whether the plaint was liable to rejection under Order VII Rule 11 CPC, whether the suit could be permanently stayed on the ground of forum non conveniens and contractual forum selection, and whether the alleged suppression of clauses in the Bills of Lading justified dismissal of the proceedings.

112 SOCAR Turkey Petrol Enerji Dagitim San Ve Tic AS v. MV Amoy Fortune

2018 SCC Online BOM 1122

Marin Laws - Arrest of vessel - Appeal against setting aside of an ex-parte order of arrest of vessel and for return of security furnished by Respondent alongwith interest - Whether Single Judge committed error in setting aside order of arrest of vessel - Held, all cases of maritime lien were based on maritime claims but all maritime claims did not give rise to a maritime lien on ship - An interlocutory stage it would not be appropriate to deal with issue of privity of contract - There was no privity of contract between Appellant and Respondent - Chief Engineer of vessel had acknowledged receipt of bunkers supplied to vessel - Prima facie a presumption of contract arises when bunkers were supplied to vessel - It would be appropriate to settle issues during trial of suit - It appeared that vessel has been already released - Appeal allowed.

113 Synergy Shipping Pvt Ltd v. Owners and Parties Interested in the Vessel MV Anushree Fame (ex Royal Pisces)

2013 SCC OnLine Mad 1736

Admiralty Law – Maritime Claim – Maritime Lien – Port Dues – Steamer Agent – Arrest of Vessel – Change of Ownership – Limitation – International Convention on Maritime Liens and Mortgages, 1993 – Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017 – Plaintiff, a steamer agent, instituted an admiralty suit seeking recovery of port dues allegedly paid on behalf of the erstwhile owners of the vessel and sought arrest and sale of the vessel after it had been sold to a bona fide purchaser and renamed – Plaintiff contended that by paying the statutory port dues it had stepped into the shoes of the Port Trust and acquired a maritime lien over the vessel – Defendant contended that the plaintiff had no maritime lien, that the vessel had changed ownership, and that in any event the alleged maritime lien stood extinguished by limitation – Whether the plaintiff could enforce a maritime lien against the vessel after the prescribed limitation period and subsequent change of ownership – Held, while port dues constitute a maritime lien, the plaintiff, even assuming it possessed such a lien, had instituted the suit beyond the limitation

prescribed under Article 6 of the International Convention on Maritime Liens and Mortgages, 1993, under which such lien stands extinguished after six months unless the vessel is arrested or seized leading to a forced sale – The suit was also filed beyond sixty days from the sale of the vessel to a bona fide purchaser – The Court further observed that Section 9(2) of the Admiralty (Jurisdiction and Settlement of Maritime Claims) Act, 2017, though not retrospectively applicable, reflects the same principle that a maritime lien survives a change of ownership but is extinguished after the prescribed period unless the vessel has been arrested – Consequently, the plaintiff's maritime lien had extinguished and the admiralty action was not maintainable – The defendant's counterclaim for wrongful arrest was also rejected for want of evidence – Suit and counterclaim dismissed.

Towage

114 Aqua Marine Offshore Services v. Owners and Parties Interested in the Vessel DHARTI 24

2014 SCC OnLine Mad 12797

Admiralty Law – Maritime Claim – Action in rem – Arrest of Vessel – Arbitration Clause – Admiralty Jurisdiction – Applications for arrest of vessel and reference to arbitration – Plaintiff instituted an admiralty suit seeking recovery of outstanding charter hire charges, re-delivery expenses and interest, and sought arrest and sale of the defendant vessel DHARTI 24 – Defendant opposed the application contending that the dispute was governed by an arbitration clause contained in the Work Order, that the Madras High Court lacked territorial jurisdiction as the vessel was berthed at Visakhapatnam, and that the vessel could not be arrested – Whether the arbitration agreement barred an admiralty action in rem and whether the Court could order arrest of the vessel – Held, the plaintiff's claim for unpaid charter hire and towage services constituted a maritime claim and the suit was an action in rem against the vessel – An arbitration clause does not bar the institution of an admiralty action in rem for arrest of a vessel; the question of reference to arbitration may arise only after the owner appears and furnishes security, thereby converting the proceedings into an action in personam – There is no legal prohibition against the arrest of an Indian flag

vessel, and in the present case the vessel was, in any event, flying the Singapore flag – Since part of the cause of action arose within the jurisdiction of the Madras High Court, the Court was competent to exercise admiralty jurisdiction and order arrest of the vessel lying at Visakhapatnam – Application for arrest of the vessel allowed and warrant of arrest directed to be issued – Defendant's application seeking reference of the dispute to arbitration dismissed.



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